1982
ANNUAL
REPORT
OF THE
OMBUDSMAN

TO THE
LEGISLATIVE
ASSEMBLY
OF
BRITISH
COLUMBIA

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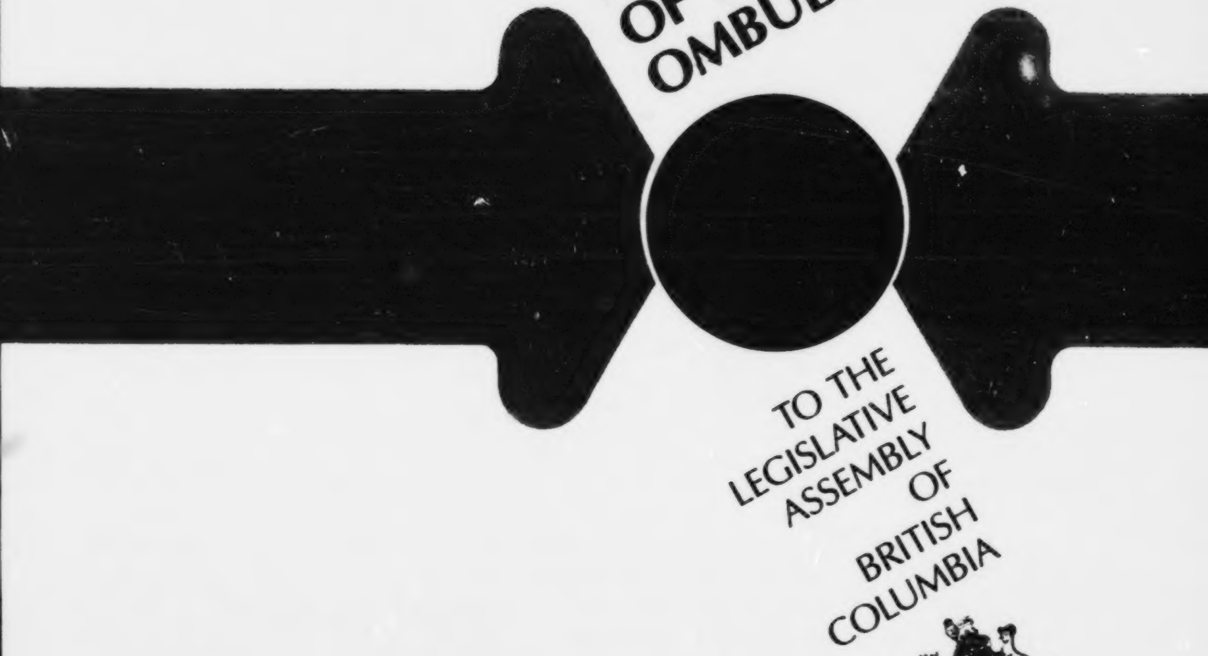

TO THE LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA

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May, 1983

The Honourable K. Walter Davidson
Speaker of the Legislative Assembly
Parliament Buildings
Victoria, British Columbia

Mr. Speaker:

I have the honour and duty to submit to you my Annual Report in accordance with section 30 (1) of the *Ombudsman Act,* R.S.B.C. 1979, c. 306. This Fourth Annual Report covers the period of January to December 1982.

Respectfully yours,

Karl A. Friedmann

Karl A. Friedmann
Ombudsman

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HIGHLIGHTS OF THE 1982 ANNUAL REPORT

- This is the fourth occasion for tabling an annual report in the Legislative Assembly. The report deals with the activities of the Ombudsman office during 1982.
- Complaints increased dramatically in 1982. A total of 8,179 new complaints reached my office in the past year. This represents an increase of 66 percent over 1981, and an increase of 113 percent over complaints received in 1980.
- My office dealt with and closed 7,979 complaint matters during the reporting year. Some 52 percent (or 4,128 complaints) of all closed cases were directed against authorities within my jurisdiction.
- Ombudsmen expect public officials to make decisions based on law and principles, as opposed to idiosyncratic personal preference. In order to live up to that standard myself I provide a further elaboration of principles and standards I use in judging the fairness and justice of official actions. This Code of Administrative Justice (Part I. A. of this report) should enable Members of the Legislative Assembly and the public to assess both the public service and the Ombudsman as we work together to provide fair and just public administration.
- In July 1981 I submitted my Special Report No. 3 to the Legislative Assembly. It dealt with an unjust failure to return expropriated property to Roy and Maureen Cuthbert of Delta when that property was no longer required by the B.C. Harbours Board for the purposes for which it had been expropriated in 1968. I am happy to report that the government reconsidered its position. As of July 1982 the Cuthberts have been restored as owners of their half-acre lot and their house.
- In my last annual report I criticized the Insurance Corporation of B.C. for making our investigations difficult. I am happy to report that we have settled our differences. Indeed I.C.B.C has made very commendable improvements in its administrative fairness and service to the public. I.C.B.C. President Thomas Holmes deserves full credit for initiating the change (for details see comments in Part III).
- The Honourable Anthony Brummet, Minister of Lands, Parks and Housing personally intervened to help rectify an ancient grievance even though his Ministry was not at fault. (*See* "Minister has heart for pioneer" - CS 82-133.)
- In 1982 I found it necessary to address three Special Reports to the Legislative Assembly. Special Report No. 4 dealt with an Attorney General Certificate under Section 17 of the Ombudsman Act. Special Report No. 5 dealt with Mrs. Reid's grievance against the Ministry of Transportation and Highways. (*See* comment in Part I. B. 5.)
- In 1982 the B.C. Court of Appeal overturned a decision of the B.C. Supreme Court and affirmed that the actions of the B.C. Development Corporation are subject to investigation by the Ombudsman. My Special Report No. 6 advised the Legislative Assembly of the judgment. B.C.D.C. has now appealed that decision to the Supreme Court of Canada. (*See* Part I. B. 4.)
- Some 250 complaint summaries (CS) are presented in Part III of this report. I recommend the following selection for the reader in a hurry: "Debtors must be informed of their rights" — CS 82-002; "Locked up, and locked up again" — CS 82-020; "Bottoms up" — CS 82-048; "The bureaucrat hunter" — CS 82-059; "Old Remo fights back" — CS 82-060; "Flooding a problem" — CS 82-065; "Enough is enough" — CS 82-077; "Bureaucracy gone wild" — CS 82-097; "The commitment" — CS 82-104; "Preventing sexual abuse" — CS 82-118; "It may be legal, but it ain't fair!" — CS 82-134; "It's not nice to fool the Ombudsman" — CS 82-155; "Access denied" — CS 82-171; "Access to Hydro's appraisal" — CS 82-184; "Handicapped driver gets discount" — CS 82-192; "Invasion of privacy" — CS 82-195; "A fowl story" — CS 82-216; "Commission to obey the law" — CS 82-223; "Let the Cabinet decide" — CS 82-226; "A substantial loss" — CS 82-227; "Even the Ombudsman is wrong on backs" — CS 82-231; "Sandwiched between boards" — CS 82-245.
- This report provides for the first time a discussion of the Ombudsman's investigation goals and strategies. It explains how my office makes the most efficient use of our limited resources in the face of an increasing complaint load. (*See* Part II. B.)
- In past annual reports I praised the Ministry of Forests for its openness to public participation in forest planning. I am now left wondering whether the public's input is no longer welcome in Forestry. (*See* Part I. C. 4.)

- Complaining is a serious business. When complainants come to me with their troubles, they hurt, and they do not smile. Nor do the bureaucrats when I must question them about their decisions and practices. I do recognize the importance of being earnest but must official life always be deadly serious? Adrian Raeside provided a lot of comic relief for me while I went about the serious business of writing this report. I hope Members and the public will enjoy his outrageous and uncensored pokes at officialdom.

- On invitation of the former Speaker, the Honourable H. W. Schroeder, the Canadian Legislative Ombudsmen have agreed to hold their 1983 Annual Conference in British Columbia. The Conference will be held in Vancouver from September 11-15, 1983, and Members of the Legislative Assembly are welcome to attend and participate.

PART I

GENERAL COMMENTS

A. A CODE OF ADMINISTRATIVE JUSTICE

In my last annual report I made an initial attempt to define the principles which I employ as Ombudsman in judging the fairness and justice of official [illegible] I would like to offer in the present report an elaboration of those principles of administrative justice. In my view it is essential for an Ombudsman to develop a Code of Administrative Justice. Such a code serves [illegible] purposes.

First, a Code of Administrative Justice spells out in detail the general criteria which will be used by the Ombudsman to measure the performance of public authorities. It also forms a rational basis for discussion of [illegible] between the authority and the Ombudsman.

Second, the Code of Administrative Justice permits the Legislative Assembly and the public to assess [illegible] of both the public service and the [illegible]. The Ombudsman is an officer of the [illegible] Assembly and [illegible] the Assembly in [illegible] accountability of the executive [illegible]. I hope this Code of Admin[illegible] become an [illegible] part of the [illegible] by which accountability can be [illegible]

[illegible] sions on complaints in the light of published standards and general principles.

The Legislature has provided the skeleton upon which such a Code must be based. The Ombudsman Act requires that the Ombudsman make a finding under one or more of the grounds listed in Section 22 (1) before he can make a recommendation to an authority. Section 22 (1) provides:

"22 (1) Where, after completing an investigation, the Ombudsman believes that

- (a) a decision, recommendation, act or omission that was the subject matter of the investigation was
  - (i) *contrary to law;*
  - (ii) *unjust, oppressive,* or *improperly discriminatory;*
  - (iii) made, done or omitted pursuant to a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory;
  - (iv) based in whole or in part on a *mistake of law or fact* or on *irrelevant grounds or consideration;*
  - (v) related to the application of *arbitrary, unreasonable or unfair procedures;* or
  - (vi) *otherwise wrong;*
- (b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority
  - (i) did so for an *improper purpose.*
  - (ii) failed to give *adequate and appropriate reasons* in relation to the nature of the matter; or

(iii) was *negligent* or *acted improperly;* or
(c) there was *unreasonable delay* in dealing with the subject matter of the investigation,

the Ombudsman shall report his opinion and the reasons for it to the authority and may make the recommendation he considers appropriate." (emphasis added.)

The following discussion of each of these grounds represents the current state of my attempt to put some flesh on this skeleton. It demonstrates how my thinking has developed since I reported on this issue in my last annual report. Although reduced to print, my thoughts are not engraved in stone. I welcome the comments of Members of the Legislative Assembly, the public and government officials.

GENERAL CONSIDERATIONS

I try to give each ground an interpretation distinct from other grounds, although I have not been completely successful in this. Some grounds are capable of a very broad interpretation, e.g. "unjust", "negligent". So interpreted they could include other grounds. "Improperly discriminatory" could be subsumed by "unjust"; so could "oppressive". A failure to give adequate and appropriate reasons could be "negligent".

If my findings present an overlap between a more general and a more specific ground, I try to choose the more specific. I believe that this approach requires me to analyse the issues more closely, which in turn promotes a better understanding of the reasons for my findings. It also helps to define more precisely the bounds of the more general terms. This is a rough rule-of-thumb, which may not apply in all cases. (See the discussion under "Arbitrary Procedure".)

My experience in deciding complaints is sufficient to allow me to abandon the use of hypothetical examples. The examples cited are all from investigations in which I made a finding or preliminary finding adverse to an authority.

THE BASIC CONCEPTS

All Ombudsman investigations focus on a decision, recommendation, act, omission or procedure. We must therefore define these basic concepts.

Decision: "Decision" means the ultimate disposition of the substance of the matter over which a specific statutory power of decision has been conferred, e.g. whether to pay a claim, grant a licence, allow an appeal, etc. It includes the reasoning process which produces the decision.

[illegible] choice, [illegible] whether the [illegible] decision is not included in [illegible] because it does not dispose of the substance of the matter over which the statutory power of decision has been granted.

Act and Omission: The term "act" refers to a physical or mental action not included in the definition of "decision". An "omission" is a failure to act and is therefore conceptually in the same category as an act.

Recommendation: A "recommendation" may be a type of "decision" if it is made pursuant to a specific statutory power or duty to recommend. Otherwise a recommendation is a type of "act". (The courts sometimes distinguish between a recommendation and a decision for the purpose of deciding whether or not administrative action can be reviewed by a court; only decisions can be reviewed. Hence the word "recommendation" was included in the *Ombudsman Act* to make it clear that the Ombudsman's authority to investigate extends beyond the ambit of judicial review to this type of administrative act.)

Procedure: A "procedure" consists of an act or a series of acts leading up to or flowing from the making of a "decision" as defined above, e.g. filing an application, conducting an investigation, giving notice of a hearing, issuing a permit, etc. Its connection to a "decision" distinguishes a procedure from other types of acts. (But see "Unreasonable Procedure".) Frequently procedural requirements will not be completely stated in the legislation, and the procedural incidents of a particular decision will have to be inferred from the nature of the decision and other factors.

An omission can also be part of a procedure, if the act omitted would have been part of a procedure.

GROUNDS

Contrary to Law

There are four categories of acts and decisions which I may classify as contrary to law:

A. Unauthorized acts

Principle: Generally the executive branch of government may only act when it has been authorized by the Legislature to do so. If an authority acts without prior legislative authorization, the act is contrary to law. In legal terminology such acts are *ultra vires*.

Example: In one case the Cabinet had made a regulation which restricted the rights of access of non-B.C. residents to a compensation fund. The complainant, an Alberta resident, was denied compensation. However, the Act as passed by the Legislature gave a right to apply to any "person". It did not contemplate the type of discrimination contained in the regulation. I therefore found the regulation to be *ultra vires*. Therefore, any act which purported to implement the impugned regulation was not authorized and was contrary to law.

[illegible]

Example: The complainant had worked for a provincial Ministry for about six years. It appeared that she had not received vacation pay for which she was entitled for three of those years. Vacation pay is required under the *Employment Standards Act*. Failure to comply is contrary to law.

Example: The *Mining Regulation Act* provided for an annual medical examination of certain types of miners. If the examining physician found that the person was "free from disease of the respiratory organs and otherwise fit for employment in a dust exposure occupation", he was to give the person a certificate of fitness on a form to be provided by the Workers' Compensation Board. However, the form provided by the Board required the physician to certify only that he "examined and had chest x-ray film made of the worker and has found him or her fit for work in any industry where a certificate of fitness is required." There was no space on the form for the physician to certify that the miner was "free from disease of the respiratory organs". The Board's form did not permit the physician to comply with the directive of the *Mining Regulation Act*.

[illegible]

Example: The highest judicial authorities have held that a discretionary power must be genuinely exercised in each individual case that comes before the decision-maker. An inflexible rule or policy is inconsistent with a genuine exercise of discretion. Nevertheless, it is legitimate for an authority to have a general policy relating to cases of a similiar type, provided it retains a "reserve clause" which permits the authority to depart from the general policy in an appropriate case.

In one case I found the Corrections Branch to be in breach of this judicial doctrine. The Branch had a policy which prohibited unescorted temporary absences for prisoners who had been convicted of murder and who had subsequently been transferred from a federal to a provincial institution. Provincial regulations, however, conferred a discretion on the Branch whether and under what conditions to permit unescorted temporary absences for all prisoners. I found that the Branch had adopted an inflexible rule which precluded the exercise of its discretion in favour of a prisoner in an appropriate case. I therefore found the denial of the complainant's application on the basis of this policy to be contrary to law.

Example: The same common law doctrine was violated by the Ministry of Transportation and Highways in its decisions whether to grant a driver's licence to persons with medical disabilities. The Motor Vehicle Branch had imposed a set of inflexible standards for determining driver's licence applications. It did not consider the fitness of the particular individual or the type of driving for which the licence would be used. Two court decisions had held this to be the wrong approach. I found it to be contrary to law. (*See* "Fairness At Last", page 101.)

[illegible]

Example: The Ministry of Human Resources was ordered by an appeal tribunal to pay a benefit to a claimant. The Ministry refused to pay. Before I could complete my investigation the claimant's lawyer obtained a judicial order directing the Ministry to comply. Had I been able to complete my investigation I would have found that the Ministry's refusal to pay was contrary to law.

[illegible]

Example: Perhaps the best example to date is the "Cuthbert" case, which was the subject of my Special Report No. 3 to the Legislative Assembly. The B.C. Harbours Board had expropriated the Cuthberts' half-acre lot and house in 1968 for the purpose of industrial development. However, the land was never used for that purpose. The Cuthberts refused to accept any offer of compensation and lived on the property for years under a monthly lease. During this period they continuously tried to have their land returned to them, but to no avail. The government offered a variety of reasons for refusing to return the land: it would be unfair to other land holders in the area whose property had been expropriated; the Cuthbert property would be a small island of privately held property in the midst of a very large holding of public lands; to return the lands would create further problems and set a dangerous precedent and possibly initiate similar demands from other former owners; government ownership was needed to prevent urban sprawl.

Against this there were other competing values: land ownership can be important to the individual as a source of social stability and emotional wellbeing. Expropriation can have adverse emotional and financial effects on the individual and can interfere with his ties to the community in which he has established himself. Expropriation can also disrupt whole communities.

I found that the individual's interest in the ownership of his home is a fundamental value in our society. Therefore, expropriation of property should be resorted to only when absolutely necessary and where the public good clearly requires that the interest of the individual be subordinated. When expropriated lands are no longer required in the public interest, action ought to be taken to reverse the process where this is yet possible. These considerations led me to the conclusion that the refusal to return the Cuthberts' property was unjust. (Special Report No. 3, July, 1981)

[illegible]

Example: A tenant had a valid claim for moving expenses, but it was defeated because she failed to give the required notice in writing under the *Residential Tenancy Act*. She was unaware of the requirement. The position of the landlord would not have been prejudiced (because he had actual notice), if the requirement could have been waived by the Rentalsman. I found the statutory provision to be unjust. *See also:* CS82-126.

[illegible]

[illegible]

Example: The Workers' Compensation Board was called upon to determine whether a worker was entitled to wages lost for the time away from work. The worker suffered from a knee condition and a back condition. The back condition was pre-existing, and it alone would not have qualified the worker for compensation. The knee condition was due to a compensable injury. The worker's inability to work was held to be due more to the back condition than to the knee condition, and compensation for lost wages was denied. However, upon my review of the evidence I concluded that it was more likely that the knee injury accounted for the disability.

[illegible]

Example: The Workers' Compensation Board had a policy to pay for the full cost of medical aid required by a worker as a result of a work related disability, although the Board may have accepted only a percentage of the disability for the purposes of paying a pension. I found this to be a reasonable policy because it would be difficult, if not impossible, to distinguish what portion of medical aid was required for the pre-existing condition as opposed to that required for the work related disability.

Nevertheless, in one case the Board refused to pay for medical aid for a disability which it found to be 37.5% compensable on the ground that the medical aid was required for that part of the disability attributable to a pre-existing condition. I found this departure from the policy to be unjustified and therefore arbitrary and unjust.

[illegible]

[redacted]

Example: In 1956 the Workers' Compensation Board had suspended a widow's pension on the grounds that she had been leading "an immoral or improper life" (as it was authorized to do under the then current legislation). It was alleged that she earned money from prostitution. Upon investigation I found that the Board's conclusions were based on uncorroborated third-hand reports, opinions of neighbours and others, as well as evidence that she was "seeing a man" and that she spent a great deal of time at the Legion. She had also been seen entering her home with a male friend and a case of beer. I doubted whether there was anything immoral or improper in this conduct, even as far back as 1956. This evidence was certainly insufficient to support a finding that the complainant was engaged in prostitution. I therefore concluded that the decision was unjust. (CS 82-235)

[redacted]

Example: A worker claimed compensation for an injury to her back sustained while lifting a heavy object at work. The claim was denied because the claimant had been receiving treatment for back pain just prior to the date of the incident at her work. The evidence showed that the previous treatment had been for a minor discomfort and that the complainant had been improving rapidly, as well as the fact that she had never missed work due to back trouble prior to the incident. There was no indication in the decision that these factors had been considered, although they were relevant. I therefore found that the decision was unjust. (CS 82-229)

[redacted]

Example: An authority may impose an unreasonably high burden of proof. In one case the Director of Vital Statistics required the complainant to produce three pieces of information as a condition of correcting the registration of the birth of her child by adding the name of the father. One of these was an "unequivocal" statement from her physician that the named father was the actual biological father. The physician could not make such a statement because he did not know for certain. A second requirement was the physician's original "notice of live birth" naming the father. A different physician had filled out the "live birth" form and did not inquire about or record the father's name. It was therefore beyond the claimant's capacity to obtain these two pieces of information. (The third piece was available.) Moreover, other evidence was available to verify the correction requested.

Example: Many people who have been laid off work experience lengthy delays in obtaining Unemployment Insurance benefits. In the meantime they apply for welfare. The Ministry of Human Resources will grant assistance, but for two weeks only. If Unemployment Insurance benefits do not come through in that time, the Ministry will grant further shelter benefits only if the recipient has a valid eviction notice as evidence of hardship. Such a requirement is unnecessary and destructive. I found it to be oppressive.

[redacted]

Example: While investigating the complainant's claim an investigator for the Insurance Corporation of British Columbia interrogated the complainant's minor child without the complainant's knowledge. A minor is vulnerable to persons in apparent authority due to his lack of information, experience and judgment. The minor is therefore more likely to be intimidated by an inquisitor than is an adult. Depending on how the minor reacts there could also be adverse consequences for the child's relationship with his or her parent. Unless steps are taken to protect the child's interests, such interrogation places the child (and his parent) at an unreasonable disadvantage. (CS 82-194)

[redacted]

Example: Section 6.11 of the Regulation under the *Insurance (Motor Vehicle) Act* requires I.C.B.C. to refuse to indemnify an insured against claims by his or her spouse. The complainant, who was separated from her husband and was waiting for the divorce to be finalized was injured while a passenger in a car driven by her husband. The accident was his fault. Although the divorce was subsequently finalized, I.C.B.C. refused to pay her claim. The complainant had sustained a whiplash injury and two broken ribs and, but for section 6.11, would have been entitled to damages amounting to several thousand dollars.

I found that section 6.11 of the Regulation was not reasonably required for the proper administration of third party liability insurance pursuant to the *Insurance (Motor Vehicle) Act*. Its purpose was to reduce the risk of fraudulent claims, but it went beyond what was required to achieve that purpose. It was therefore improper for the regulation to discriminate on the basis of marital relationship.

Example: The complainant was injured at work in 1968, but delayed applying for Workers' Compensation until 1979. Although the Workers' Compensation Board has the discretion to extend the time for such applications for injuries occurring on or after January 1, 1974, it cannot do so for injuries sustained prior to that date. It seemed to me that differential treatment of applications based on the date of the injury was not reasonably required for the attainment of the purpose of the scheme. Stale applications can be disposed of on the basis that the evidence is insufficient to establish the claim. If the evidence is sufficient, there would be no reason to deny the claim solely on the basis of delay. The statutory provision was therefore improperly discriminatory.

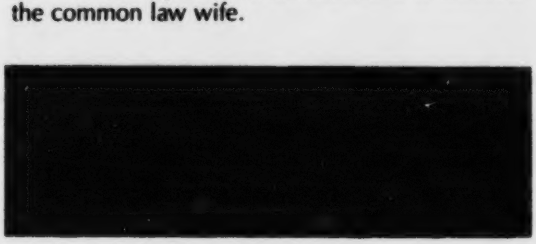
Example: I.C.B.C. denied a complainant's vandalism claim on the grounds that there was insufficient evidence of vandalism. The complainant had proved the existence of scratches on his vehicle and that someone had been observed deflating his tires just prior to the discovery of the scratches. The common law rule is that the onus is on the insured to provide sufficient proof to make out a prima facie case only. Once the insured has done so the onus then shifts to the insurer to prove that the loss did not occur from the cause alleged. I found that I.C.B.C. had mistaken the question of the onus of proof and hence its obligation to disprove the claim (CS 82-196).

Example: An official guide to the rules for inmates in a correctional centre implied that family visiting privileges could be suspended for any breach of the institution's behaviour code. I found that this was based on a mistake of law because the Regulations permitted such punishment only in cases in which the breach was directly related to a visit, e.g. receiving contraband from a visitor.

Example: At the time she applied for a B.C. marriage licence the complainant was advised to sign her name as it appeared on her Nova Scotia birth certificate. Her first name was mis-spelled on the certificate. Later the Nova Scotia document was officially corrected. She applied to have her marriage registration corrected. The request was denied on the ground that there was no authority to make such a change. The *Vital Statistics Act* provides that a change may be made to a marriage registration "where the name of a person is changed under the *Name Act* or under a statute of another province." Since the complainant's name had been changed under a Nova Scotia statute I found that the refusal was based on a mistake of law.

Example: When all the evidence has been obtained and the authority simply misperceives it and draws a wrong inference or conclusion of fact from it, there may be a mistake of fact. In one case the authority denied a claim because it had miscalculated the amount of the claimant's wages.

Example: A mistake of fact may occur when a wrong inference or conclusion of fact results from the authority's lack of knowledge of evidence which, if known, would have resulted in a different conclusion of fact. If the missing evidence is reasonably available, and if there is a duty on the authority to obtain it, the failure to obtain it may also be "negligent". An inmate's application for educational leave was denied because the authority believed his common law wife was living outside the province. That was not correct; she lived in the same city as the inmate and maintained contact. The community assessment had failed to discover the common law wife.



[illegible]

Example: The complainant applied to the Workers' Compensation Board to reopen his case and assess him for a disability pension. The Board treated the application as a request for a reconsideration of his claim for medical expenses. This led the Board to apply irrelevant criteria in determining the application.

Example: The Ministry of Forests had developed a set of guidelines for determining whether to establish a citizens' committee to advise it regarding Ministry programs and proposals. The guidelines covered all of the relevant factors which could affect such a decision. The complainants—a group of residents in the Quesnel area—had shown that they satisfied all the criteria for the establishment of a citizens' advisory committee. The Ministry had refused to set up such a committee. The decision could not be reconciled with the Ministry's guidelines and I concluded that it must have been based on some irrelevant ground or consideration.

[illegible]

Example: I found there was an arbitrary procedure when an inmate of a correctional centre was placed in lock-up by the Director without a formal hearing as required by the regulations. I viewed this omission as particularly serious because of the deprivation of the inmate's already limited liberty and the deliberate failure to follow a legal requirement. I also found the Director's actions to be contrary to law. (CS 82-020)

[illegible]

Example: The Companies Branch had a procedure for scrutinizing the proposed names of companies seeking incorporation in order to avoid approving confusing or misleading names. The procedure consisted of a comparison of the proposed name with the names of previously registered companies. However, the Branch had granted approval for a name which was so similar to that of another company in the same city that the older company frequently received letters and bills that should have been sent to the new company. Each company had the same first word in a three-word name. The same word had been approved for use by over thirty different companies in the province. It seemed to me that the name was no longer distinctive and to grant it risked creation of a potentially confusing situation. I therefore found that the procedure for approving the name was unreasonable.

Example: An employer put his application for registration with the W.C.B. in the mail on the same day his worker started to work for him. The worker was injured and the Board passed the cost of compensation on to the employer because he had not been registered at the time of the accident. The *Workers Compensation Act* requires an employer to register with the Board "when he becomes an employer". It is the Board's policy not to register an employer until his application has been received by the Board. Therefore, an employer who puts his application in the mail will not be covered until the application is delivered to the Board sometime later. The employer's registration form has a notice on the reverse which states only the consequences for failure to register with the Board "when required". The purpose of the notice is to ensure that the employer is aware of the Board's requirements. The notice was not specific enough to accomplish this purpose. I therefore found that this procedure was unreasonable.

[illegible]

[illegible] court would never be called upon to consider, and I have had to develop my own standards to deal with them.

There are three main elements of fairness in the decision-making process:

- An adequate opportunity for the person affected to be heard before the decision is made.

  The particular mechanisms by which this can be accomplished will vary depending on the circumstances. It may include one, some or all of the following procedures:
  —notice of the proposed action
  —notice of the criteria to be applied
  —an opportunity to make representations
  —an opportunity to present evidence
  —an opportunity to call witnesses
  —disclosure of adverse evidence
  —oral hearing (public or private)
  —representation by counsel
  —a record of the proceedings

If other appropriate procedures are needed, e.g. provision of an interpreter, they should be used. The degree of formality required will generally relate to the seriousness of the consequences of the decision for the individual concerned and his or her ability to use the available procedures. The more dire the consequences of an adverse decision the greater the need for the opportunity to be heard and the greater the need for full formality in the hearing process.

- [illegible]

  Good faith and an open mind are qualities of the decision-maker which are essential to maintaining the integrity of public administration. [illegible]

- [illegible]

  [illegible]

[illegible]

Example: An applicant for a business licence was given two days' notice of the meeting of the panel to decide the application. This was insufficient time to allow the applicant an opportunity to prepare submissions and was therefore an unfair procedure. (*See* "Complaints from the Business Community", page 130.)

Example: In the same case the authority failed to disclose to the complainant the information adverse to his application. This denied the complainant the opportunity to know the case he had to meet and therefore deprived him of any meaningful opportunity to make representations.

Example: I.C.B.C. terminated no-fault accident benefits without notice. I found this to be an unfair procedure. I also found that I.C.B.C.'s failure to give reasons for the termination was an unfair procedure. (CS 82-204)

Otherwise Wrong

[illegible]

Example: A child who was the ward of the Ministry of Human Resources and who had been placed in a foster home threw a rock which broke a neighbour's window. The neighbour tried to get the Ministry to pay for the window, but it refused on the ground that it was not legally liable. Although the Ministry was legally correct, it was also the guardian of the child and ought to have acted as a responsible parent would have. Since none of the other grounds seemed to fit the situation, I characterized the Ministry's position as "otherwise wrong".

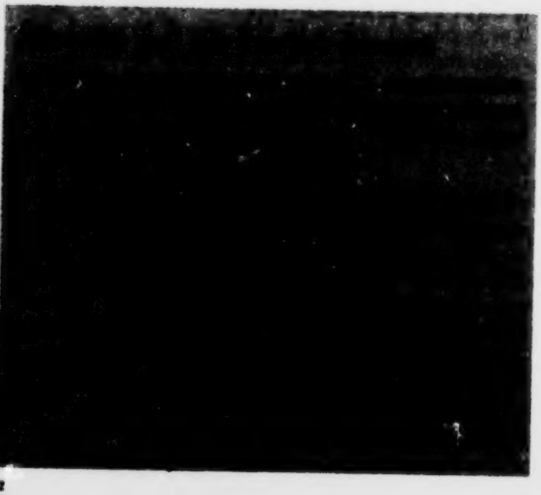
[illegible]

Example: I have not substantiated any complaints involving the first situation, but I have for the second. I refer to Mrs. Reid's complaint, which was the subject of my Special Report No. 5 to the Legislative Assembly.

The Ministry of Transportation and Highways used its expropriation power under the *Highway Act* to take a right-of-way over property owned by the complainant. Previously the Ministry had granted subdivision approval to a developer in the erroneous belief that the land which formed the right-of-way (and which would have provided access to the subdivision) belonged to the Crown. The complainant claimed ownership of this strip of land. Prior to the expropriation she was the owner, or at least had an arguable case.

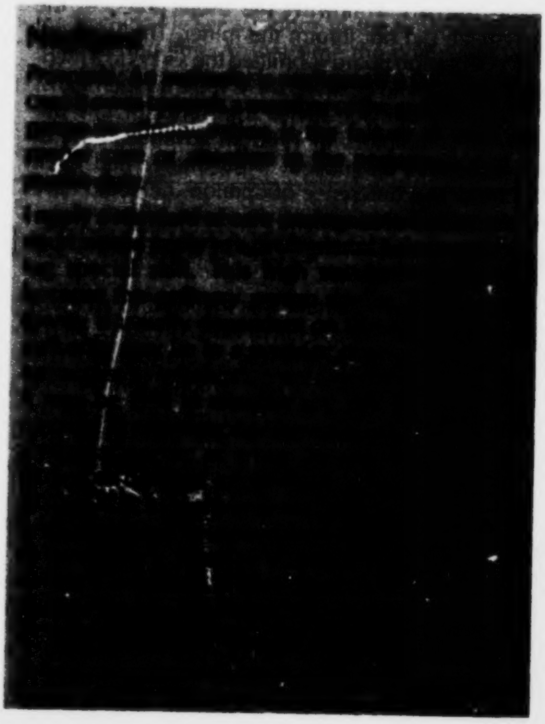
I concluded that in the circumstances of the case the Ministry had expropriated the right-of-way for the purposes of providing access to the private subdivision and avoiding a judicial determination as to the true ownership of the land. The power of expropriation conferred by the *Highway Act* was not intended to assist private developers, but rather to serve the public interest. The expropriation was therefore intended to promote objectives other than those for which the power had been conferred and was therefore done for an improper purpose.

Example: The complainant operated a restaurant in an area regulated by the Ministry of Finance to which he had to apply annually for a business licence. The Ministry of Environment had a program to acquire land in the area, including that owned by the complainant. The Ministry of Environment asked the Ministry of Finance to refuse to renew the complainant's business licence. Since there was no justification for the refusal I concluded that the purpose of the request was to pressure the complainant into selling his property to the Ministry of Environment. This was not an objective for which the power to licence businesses was conferred on the Ministry of Finance. The request of the Ministry of Environment was therefore made for an improper purpose.



Example: An applicant for an Autoplan agency licence was refused on the ground that there were sufficient licensees within his trading area. It was the applicant's submission that his office should be considered to be in a separate trading area and he presented much information and data in support of this position. Since the Corporation's reasons did not address this submission directly and completely, I found them to be inadequate and inappropriate.

Example: The complainant and his passenger were injured in an automobile accident. I.C.B.C. found the complainant to be 100 percent responsible and paid the passenger's claim. I.C.B.C. then sent the complainant a form letter stating only that the payment had been made and that he would lose his safe driving vehicle discount. Since the letter did not spell out the rationale for I.C.B.C.'s liability decision, I found the reasons were inadequate and inappropriate.



[redacted]

Example: A miner had been examined for silicosis in 1970, at which time x-rays were taken. The examining physician thought there were signs of early silicosis. Following the usual practice, the physician did not inform the miner. The Workers' Compensation Board submitted the x-rays to a medical referee who believed there were no such signs. The Board did not advise the miner of this difference of opinion. In 1980 an advanced case of silicosis was diagnosed. If the miner had been aware of this difference of opinion, he could have taken steps to deal with his disease at an early stage. The Board's failure to inform him deprived him of that opportunity.

Example: A complainant was involved in an automobile accident as a result of which I.C.B.C. paid a third-party claim against his insurance. This resulted in the loss of his Safe Driving Vehicle Discount—a loss which exceeded the cost of the repairs. The complainant could have retained his Safe Driving Vehicle Discount by paying the claim. However, the Corporation failed to advise the complainant of this option.

Example: An authority failed to advise the complainant that there was a right of appeal from its decision until most of the time for appealing had passed.

I have also found negligence in the following situations.

Example: Vital evidence concerning the complainant's claim was so carelessly recorded that it resulted in the wrongful denial of his claim.

Example: At an inquest into the death of a person in a provincially-owned hospital the Coroner failed to follow up evidence suggesting that hospital staff or procedures may have contributed to the death. (CS 82-016)

Example: An authority advised a complainant that he could appeal its decision. However, it named the wrong appeal body. As a result, the complainant lost his right of appeal.

Example: An inmate in a provincial institution was removed from his cell for the purpose of transferring him to another city for a court appearance. He was not informed of the purpose of the removal until afterwards when it was too late for him to secure the belongings left behind in his cell. Moreover, the staff at the institution did not collect his belongings or record an inventory of them. When the inmate was returned to his cell several days later his belongings had disappeared.

[redacted]

Example: A Sheriff's officer who, while enforcing a writ of seizure and sale, seized an automobile registered in the name of a person not named in the writ. It was official policy for the Sheriff to check the registration of any vehicle to make sure that the debtor was the registered owner before seizing the vehicle. The Sheriff's officer failed to comply with this policy even when warned by the complainant that he was not the owner of the vehicle. I found the Sheriff's action to be improper.

*Example:*The Ministry of Human Resources initiated a province-wide search for information on five individuals by means of a telex sent to each Ministry office in the province. Only two of these individuals were clients of the Ministry. The only apparent connection between the five was the fact that they had all recently participated in a demonstration to protest Ministry policies. The search became known to the individuals concerned and caused them a good deal of anxiety. The Ministry said that the search was undertaken as part of an investigation of allegations of fraud against the named individuals. The official policy was to refer all such allegations to the Ministry Inspector. This had not been done. I, therefore, found that the Ministry had acted without due regard for the adverse consequences which it should have known would or might befall the persons affected. (Public Report No. 2, March, 1982)

Example: I.C.B.C. retained a private investigator to investigate the complainant's background. The complainant had suffered a neck injury in an automobile accident. The investigator's report to I.C.B.C. contained many uncorroborated statements by her neighbours regarding her social life, boyfriends, drinking habits, alleged drug use and suspected prostitution. All of these statements were prejudicial; none had any relevance to her injury claim. Yet they would remain on I.C.B.C.'s file to be perused if she made a claim in the future. I.C.B.C. had recklessly disregarded the possible adverse consequences of recording such statements and had acted improperly. (CS 82-195)

[redacted]

Example: A complainant waited four and a half years for a decision on his application to buy a parcel of Crown Land. The Ministry of Lands, Parks and Housing attributed the delay to departmental reorganization and policy revisions. I found that this was not an adequate reason for failing to provide service to the complainant for such a long time and that nearly two years of the delay was unreasonable. (*See* my 1980 Annual Report, page 46.)

Example: The complainant applied to the Motor Carrier Branch for a taxi cab licence in May 1981. By April 1982 he had not received a decision. The Branch failed to provide a satisfactory explanation for this lengthy delay and I found it to be unreasonable.

Example: A charge of child abduction was laid against the complainant by the Victoria R.C.M.P. The complainant was arrested in northern Vancouver Island and remanded in custody for transfer to Victoria. It took the R.C.M.P. and Sheriff's Services two nights and part of three days to have her brought before a judge in Victoria at which time she was released. The next day charges were stayed. I was concerned about the length of time the complainant spent in custody. From her arrest until her court appearance two days later in Victoria the complainant had spent one night in jail in Alert Bay followed by a trip to Campbell River where she spent another night in jail; then a trip by van to Nanaimo; a flight to Vancouver; and a flight to Victoria. Since a vehicle can drive from Alert Bay to Victoria in less than 24 hours, I found the delay to be unreasonable.

Example: The complainant had complained to the Human Rights Branch concerning alleged discrimination in her employment. The complaint was actively pursued by the Branch in an attempt to settle it over the course of a year. These attempts were unsuccessful and the Officer recommended to his superior that the matter be submitted to the Minister. Nothing further was done by the superior officer for nine months. At that time the complaint was referred to the Minister. I found that there was no excuse for a delay of nine months and that it was unreasonable.

B. OMBUDSMAN EFFECTIVENESS

The present report for the year 1982 covers the third full year of operation of the Ombudsman institution in British Columbia. In my 1980 Annual Report I was able to report " . . . an extraordinary amount of goodwill and cooperation from ministry officials . . ." (p. 12). The year 1981 proved difficult and my report stated (p. 6): "I had to work hard to maintain that cooperation and I must report several instances of failure to achieve administrative justice". I am now happy to report that 1982 was a good year for administrative justice in British Columbia. Several outstanding issues have been resolved satisfactorily—including the complaint of Roy and Maureen Cuthbert (Special Report No. 3)—and two large governmental organizations (I.C.B.C. and the Workers' Compensation Board) have made major efforts to meet the concerns I had to raise about administrative justice and fairness in their dealings with the public. I believe a perusal of Part III of this report ("Comments on Ministries and Complaint Summaries") will demonstrate that these two organizations, as well as several other government ministries have made remarkable and very commendable efforts to improve fairness and service to the public. They have responded favourably to suggestions and recommendations coming from my office not only with respect to individual cases but also with respect to changing procedures and practices that will benefit all citizens of the province (see also Part IV "Changes in Practices and Procedures").

The year 1982 was also difficult and challenging for my staff and myself because we experienced a very substantial increase in the number of complaints made by the public while our resources remained essentially unchanged at 1980/81 levels. We faced some difficult choices. Requests for increased staff resources were not accepted by Treasury Board during 1982. My staff and I made some difficult adjustments to our procedures and practices that essentially refined our own decision-making process about how we divide our time between competing complainants. I believe we still deliver a quality service to the public. The public service, I believe, also appreciates our thorough investigations, especially when we conclude that a complaint is not substantiated and we provide a reasoned and well documented explanation to the complainant.

In the following comments I wish to inform the Legislative Assembly about continuing developments and some issues previously raised in reports.

1. The Child Abuse Registry —Revisited

In my 1981 Annual Report, I gave a glowing account of the Ministry of Human Resources' new policies and procedures for its Central Registry of Protection Reports (commonly called 'The Child Abuse Registry').

I spoke too soon. The Ministry did not implement these new policies and procedures until almost a year later. And when it did, there were substantial changes which I considered unreasonable. Besides having a legal mandate to protect children, I think the Ministry also has an obligation to be administratively fair to parents. The changes made, after I thought the Ministry and I had agreed to the new policies and procedures, did not fully recognize this important obligation.

Clearly, the Ministry's and my understanding of our "agreement" differed.

More specifically, the Ministry first agreed with my recommendation to establish a review mechanism for both uncorroborated and substantiated complaints. But the new policy does not allow for a review of substantiated complaints. Also, the Ministry first agreed to have the review conducted at a higher level, namely the Superintendent of Family and Children's Services. Now, the review is done at the District Supervisor and the Regional Manager level. Only in those cases in which the Regional Manager, after reviewing the uncorroborated abuse complaint, decides the complaint is inappropriately classified, will he refer the matter to the Deputy Superintendent recommending that the complaint and the alleged abuser's name be expunged from the Registry. Evidently, the Ministry built safeguards into the system to make sure that information is not wrongly expunged. But I wanted similar safeguards in place to ensure that information is not wrongly retained in the Registry. By failing to provide these safeguards, the Ministry is not fulfilling its obligation to be administratively fair to parents.

I am also concerned that when the Ministry informs parents and/or the alleged abusers that a Protection Report and their names are on the Registry, the letter does not outline the procedure for requesting a review. Under the new policy, the Ministry is to confirm that a report has been registered, as well as to outline the procedure for requesting a review. The actual letter to parents, however, says that at the end of three years uncorroborated reports will be automatically reviewed to determine whether they should be removed from the Registry and destroyed. If the parents wish further clarification of "this matter", the letter says they should contact the social worker in the District Office who responded to the original allegation. In my view, this letter does not contain adequate information about the review procedure. First, the letter does not inform parents of their right to ask for an immediate administrative review, and second, it directs them back to the person who confronted them about the abuse allegation, without letting them know that other Ministry representatives will be involved with the review.

Since the new policies and procedures have come into effect, I have had several lengthy discussions about these differences with the Minister, Deputy Minister, Executive Director, and Manager of Family and Child Services. These discussions have resulted in an effective, but tentative resolution. We have tentatively agreed that each Protection Report registered with the Registry will be reviewable. The only exceptions are cases in which a judge has already decided protection of the child was necessary. In these cases, review would be redundant. The review remains with the District Office and Regional Manager. The letter to parents notifying them that the Protection Report has been registered will also give them adequate information about the review procedure.

I do not have the Ministry's final draft of its new policies and procedures for the Central Registry of Protection Reports. To date, all I can report on is our tentative agreement, which I think is positive. When I receive the Ministry's new final draft for its policies and procedures, I will report separately to the Legislative Assembly about the final disposition of this matter.

2. Enforcement of Maintenance Orders —Revisited

In my 1981 Annual Report, I highlighted some of the problems I saw arising from the inadequacies of the province's system of enforcing maintenance orders. Soon after my report was released, the Attorney General announced a change in law which, he suggested, would greatly relieve the "enforcement problem" (the *Family Relations Amendment Act*). The change allows the Attorney General to develop structures in court systems throughout the province to promote quick and efficient enforcement of maintenance orders.

Initially this approach sounded very encouraging. It appeared to benefit all persons seeking such orders. The Attorney General, however, followed this announcement with a statement that the funding for legal services to people unable to pay legal fees would be reduced. Thus, while access to the courts is, in theory, greatly increased, access to counsel has been reduced, particularly for those on limited incomes.

Further, with the change in law came changes in the procedures for enforcement against an errant spouse. Essentially, when a maintenance order falls into arrears, a summons can now be issued automatically and is served by the Sheriff. If a warrant is needed, things become much more confusing, for some are served by the sheriffs, and others by local police. An example is the case I call "Hide and seek" (CS 82-007). A woman complained to me last year about delay in enforcing a maintenance order which allowed immediate "in default" time of 10 days in jail, if monthly payments were not met. The order was three months in arrears. Investigation showed the woman's husband was adept at avoiding authorities, but the local sheriff co-operated with my office, made this warrant a priority, and obtained all the money owed four days later.

Six months later the same woman came to me with the same problem of arrears, but this time a warrant had been issued because her husband did not appear in court. The police execute this type of warrant. My complainant waited more than two months, and still the warrant had not been served, though her husband works only two blocks away from the police station.

Again, when my staff called, the local police agreed to try to speed up the arrest. The problem is that when faced with warrants for criminal offences, not paying fines, etc., family matters do not rank as a police priority.

Needless to say, I cannot state that the problems of the enforcement of maintenance orders have been resolved. It may require the attention of the Legislative Assembly.

3. Expropriation Issues

I have raised my concerns about existing expropriation procedures and practices in my previous two annual reports as well as in several special reports. During 1982 the Honourable G. Gardom, Minister of Intergovernmental Relations, proposed for discussion in a green paper a new draft expropriation bill and invited comments. I submitted my comments and made them subsequently available in my Public Report No. 3. I concluded that report by stating:

> "The draft *Expropriation Act* is, in my opinion, a substantial and positive development in this area of our law. Expropriation powers have in the past been used by government authorities with few restrictions and frequently without due consideration of the serious effects of expropriation upon the citizens affected. That citizens will now be granted a good measure of protection from the use and abuse of expropriation powers is a positive step and one which should avert many of the types of complaints which I have received in this area."

My report contained a number of suggestions arising directly from my experience with expropriation complaints and I hope my observations will be useful to the Minister and Members of the Legislative Assembly when the proposed legislation is before the Assembly for consideration.

4. Litigation

British Columbia will be the first province to have its *Ombudsman Act* come before the Supreme Court of Canada for a ruling. The issue is whether the Ombudsman has the authority to investigate a complaint against the British Columbia Development Corporation. The Supreme Court of British Columbia had ruled in 1981 that the Ombudsman did not have jurisdiction because the particular act complained of (refusal to renew a lease) was not "a matter of administration" but rather was a "business" decision. An appeal to the British Columbia Court of Appeal in 1982 was successful. In a 2 - 1 judgment the Court of Appeal accepted the Ombudsman's argument that "a matter of administration" referred to any act of the executive branch of government, whether or not it involved a business decision. (The judgment was the subject of my Special Report No. 6.)

The British Columbia Development Corporation obtained leave to appeal to the Supreme Court of Canada in September 1982. The hearing and a decision are expected in 1983. The Ombudsmen of Saskatchewan, Ontario and Quebec have been granted permission by the Supreme Court of Canada to appear as interveners in the case.

Previous applications by the Ombudsman and the Commissioner of a Royal Commission of Inquiry to the Supreme Court of British Columbia for declaratory orders concerning the Ombudsman's jurisdiction have been adjourned pending a decision in the B.C.D.C. case.

5. Update

In this section I wish to comment briefly about cases or issues addressed in previous reports in order to bring a change or new development to the attention of the Legislative Assembly.

a. The Cuthbert Case

In July 1981 I presented my Special Report No. 3 to the Legislative Assembly. It dealt with the complaint of Roy and Maureen Cuthbert of Delta who wished to regain title to their lot and home that had been expropriated in 1968 in connection with the Roberts Bank port development. I had made a further appeal for a change in the disposition of this case on page 10 of my 1981 Annual Report. By mid-1982 the government offered to return the property to the Cuthberts and that transaction was completed by the fall of 1982. It was a long and costly struggle for the Cuthberts. The entire family is now happily in possession of their own home again.

The Cuthbert Family

Photo, courtesy of the Province.

b. The Anderson Provincial Park

My 1980 Annual Report described the complaint I received from Mr. and Mrs. Anderson of Nelson (pp. 55-57). The Ministry of Transportation and Highways had failed to respect the terms of an agreement for sale of a portion of their land, namely that the land would be developed as a roadside park or campsite.

My office assisted in transferring the land to the Ministry of Lands, Parks and Housing. I concluded my complaint summary in the 1980 Annual Report as follows:

> "The Ministry of Lands, Parks and Housing has now arranged for the designation of the property as a Provincial Park to be officially opened sometime in 1981. Although the

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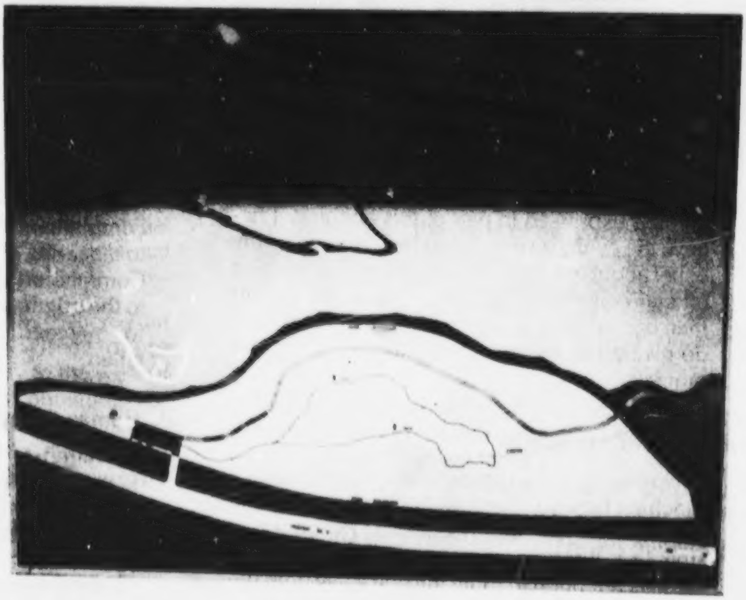


Parks Branch has decided to give the Park a rather dry name for historical reasons, to me it will always be the Anderson Provincial Park."

It took a little longer to complete the Park, but in May 1982 the Andersons invited me to attend the official opening of Grohman Narrows Park. This was the first time I had an occasion to see the park and I am more convinced than ever that the Andersons deserve full credit for their public spiritedness. It is a beautiful park for visitors and Nelson residents.

The Park opening occasioned some media coverage including the following editorial in The Free Press (Fernie):

> "Watch big brother
>
> "The sad experience of a Nelson area couple, although having a happy ending, should alert every citizen of BC to the heartlessness of government bureaucracy.
>
> "In the Nelson area, some years ago, a couple named Anderson had their farm cut up by the Highways Ministry, who re-rou-

> ted Highway 3 through their land. In the ensuing dealing, the couple agreed to sell a severed portion of their farm to the government with a condition attached that the area be used as a roadside campsite or park.
>
> "Later, the highways department apparently did not wish to live up to its agreement and, according to reports came close to allowing the area to be used as a site for an incinerator.
>
> "The Andersons fought back and fought for 15 years, a length of time which could have discouraged most people. Now the spot has been declared a Provincial Park and the Andersons say it would not have happened had it not been for the efforts of BC's Ombudsman, Dr. Karl Friedmann.
>
> "The lesson here is two-fold: BC definitely needs an Ombudsman and citizens should be extremely wary of making any deals with any branch of government. The individuals in government who make the deals fade right away into the anonymity of bureaucracy, leaving the citizen nothing to fight but a gray, well-nigh impenetrable wall of faceless beings who couldn't care less.
>
> "Citizens, be wary."

I am quoting this editorial even though I do not share the generalized condemnation of public officials expressed in part of this editorial. I believe the cynicism expressed here reinforces my belief about the need and importance of keeping official commitments. Trust is more easily lost than earned back and every public official must do his best to maintain the public's trust in our officials.

c. Ombudsman gullible?

In November 1979 I received a complaint from a ranching family in the East Kootenays about the prospective siting of a major (500 kv) transmission line through their property. It had been Hydro's intention to route the line away from the ranch through the Pickering Hills (east of Cranbrook). After public hearings, consultant reports and objections from other government agencies (mostly Fish and Wildlife, Ministry of Environment) Hydro reluctantly planned a route around the Pickering Hills right through my complainants' ranch. Hydro's reluctance was based on the additional cost of one million dollars for the detour. The new route created several problems in that my complainants were just about to add a guest ranch to their operation to supplement their ranching income, and the 500 kv transmission line would completely ruin the aesthetics of their beautiful valley. A second rancher who shares the valley also objected strongly to the re-routing of the transmission line. She disputed, with some justification, some of the arguments made by Fish and Wildlife for keeping the line off the Pickering Hills. The Wildlife Branch, for example, claimed that the Pickering Hills were important as a sheep wintering range. This rancher, who also happened to have been in the outfitting business for several decades, was positive in her knowledge that there had not been one sheep east of the Bull River (and therefore on the Pickering Hills) in over thirty years.

My investigation covered all issues extensively, including consultations with government resource management agencies, Fish and Wildlife clubs and Hydro. Despite my empathy for my complainants' plight, I concluded that their complaint could not be substantiated because there was sufficient validity to the concerns raised by the resource management agencies. I advised my complainants about methods of receiving adequate compensation and also drew their attention to the fact that Hydro still needed the approval of the Utilities Commission for the transmission line. I suggested that they bring their concerns to the attention of the Commission and request a hearing. I closed the case as unsubstantiated in March 1981.

I recently went for a hike in the Pickering Hills and discovered Hydro survey stakes all over the Hills. When I made enquiries I learned that my complainants had indeed made representations to a hearing of the Utilities Commission and the Commission had restored the routing of the line to the original plan. I congratulated the ranchers for succeeding where the Ombudsman had failed.

d. Human Resources Information Searches

In March of 1982 I issued my second Public Report entitled "Ombudsman Investigation of an Allegation of Improper Search for Information on Five Individuals on the Part of the Ministry of Human Resources". On investigating a report that five individuals had been the subject of a mysterious search for information about them, I made two recommendations to the Ministry:

(1) that an apology be given to the individuals for the search, and

(2) that the Ministry develop, on a priority basis, a set of written policies and procedures that would protect the public from further such mysterious searches.

Unfortunately, the Ministry refused to extend an appropriate apology. It agreed, however, to develop written guidelines.

Almost precisely one year later, I am happy to report, those procedures have been finalized. I recognize that no policy or procedure can ensure that private and personal information held by any Ministry will be absolutely protected from misuse. But I am equally convinced that having explicit procedures in place to direct Ministry employees on the appropriate ways of dealing with requests for information is a step in the right direction.

e. Age Discrimination in Social Assistance

In my 1980 Annual Report (pp. 15-16) I brought an issue to the attention of the Legislative Assembly in which I was unable to persuade the Minister of Human Resources to change a regulation which I had found to be improperly discriminatory. Persons under 31 years of age had been receiving a lesser amount of income assistance than persons over that age. During 1982 the Ministry of Human Resources eliminated the differential.

f. Special Report No. 5

Shortly before the Legislative Assembly adjourned for the summer in 1982, I submitted a special report on my investigation and recommendations concerning a complaint I had received from Mrs. Vera Reid.

Mrs. Reid complained to me in the latter part of 1981. She alleged that the Ministry of Transportation and Highways had improperly claimed that an old trail through her property was contained within a public right-of-way, 66 feet wide.

The status of the right-of-way had become an issue because a private company wished to subdivide its land holdings which lay to the west of her property. As a condition of obtaining approval for its subdivision, the company was required to show that there was a public road which provided access to its land. The company approached the Ministry asserting that the right-of-way through Mrs. Reid's property was public and would, therefore, provide access. The Ministry at first disagreed, but the company's agent discovered the existence of a gazette notice published in 1911 which provided that all public roads in rural areas were deemed to be 66 feet wide. On that basis, the Ministry agreed that the road and the right-of-way were public property and informed Mrs. Reid of this decision.

Upon investigating the complaint, I discovered that in 1920 the B.C. Supreme Court had declared that the 1911 gazette notice was invalid. But when I brought this to the attention of the Ministry, two things happened. First, the Ministry argued that the judgment of the Supreme Court in 1920 was not binding on it, and second, the Ministry expropriated the right-of-way. I questioned why, if the Ministry insisted that it already owned the right-of-way because of the 1911 gazette notice, it would now find it necessary to expropriate it.

After reviewing the Ministry's comments on my preliminary findings, I concluded that the Ministry had made three errors. First, its assertion that the right-of-way through Mrs. Reid's property was public, because of the 1911 gazette notice, was based upon a mistake of law. Second, the Ministry's use of the 1911 gazette notice since 1920, when it was declared invalid by the Supreme Court, was unjust and oppressive. And, third, I concluded that the recent expropriation of the right-of-way by the Ministry was done for an improper purpose and was unjust and oppressive. The latter conclusion was based upon the fact that the Ministry was using its expropriation powers to benefit the company which wished to subdivide, whereas expropriation powers should only be used when necessary to serve the public interest.

I made a number of recommendations. My first recommendation was that the Ministry repeal the expropriation and return the right-of-way to Mrs. Reid. I also recommended that the Ministry ask the Supreme Court to determine (again) whether the 1911 gazette notice is valid, and if the Court said that it was not, that the Ministry compensate owners of the land who forfeited rights-of-way to the Ministry on the basis of the gazette notice. I also recommended that if the Supreme Court declared that the 1911 gazette notice was invalid, that the Ministry discontinue its practice of claiming ownership of rights-of-way on that basis.

The Ministry has consistently declined to implement any of my recommendations. Mrs. Reid has now accepted the fact that there is the expropriated public right-of-way across her property, whether she likes it or not, and her lawyer is still negotiating with the Ministry about the amount of compensation to be paid to her.

Interestingly, one of my recent complainants informs me that the Ministry has refused to agree that a right-of-way, crossing his neighbour's land and providing access to his own, is a public right-of-way because of the 1911 gazette notice. Quite frankly, I am at a loss as to what to think about this. On the one hand, since the Supreme Court in 1920 declared the gazette notice was not valid, it seems that the Ministry's decision is correct in law. But on the other hand, in Mrs. Reid's case the Ministry claimed that the gazette notice was valid and, in my view, consistency is central to our concept of fairness.

C. SPECIFIC ISSUES FOR THE ATTENTION OF THE LEGISLATIVE ASSEMBLY

As in past annual reports I feel again the need to draw a few specific issues to the attention of Members of the Legislative Assembly.

1. Bureaucracy in Distress: the Boards of Review

One of the most vexing problems I encountered during 1982 was that of unreasonable delay on the part of the Boards of Review. The Boards of Review hear appeals of decisions made by adjudicators of the Workers' Compensation Board. The Boards of Review have the advantage of being independent of the Workers' Compensation Board and, in theory, these appeal tribunals (each consisting of one independent chairman, one representative from labour, and one representative from management) seem ideal. In practice, they have become a bureaucratic nightmare for the injured worker and his family.

Most workers must wait at least a year for a Board of Review decision. My office has encountered decisions that took almost two years to make. Delays of this length represent a serious failure on the part of the Boards of Review to render decisions in a timely fashion. Unlike those appealing income assistance decisions of the Ministry of Human Resources, workers waiting for a decision by the Boards of Review do not have benefits continued while an appeal decision is made. Financial and family stress become inevitable and serious. A case in point was brought to my attention by a worker who had been waiting nine months for a decision after his appeal was heard. Eventually, his financial affairs reached the point at which he was forced to move, along with his wife and two children, away from their home in the interior of British Columbia into the home of his in-laws. Another worker complained to me when he was told that a decision on his appeal would not be available for at least another eight months. During the four years since his work injury the complainant had exhausted his savings and was compelled by financial necessity to sell his business. He doubted his ability to survive a further eight months' delay. These cases are not at all unusual.

One worker was injured in 1980 and had his claim for benefits denied. He applied for an appeal to the Boards of Review in December 1980 and his appeal was not heard until April 1982. Every month the worker's lawyer asked for a decision. In October 1982 the Boards of Review stated that they would endeavour to reach a decision as soon as possible. The worker had been surviving on a disability policy while he waited for the outcome of his appeal but when this expired, he resorted to welfare. The lawyer contacted my office in March, 1983. When I brought the complaint to the attention of the Boards I was promised a decision in the next two to three weeks. This commitment was not met; however, a decision was made within five weeks and, upon my recommendation, an apology accompanied it.

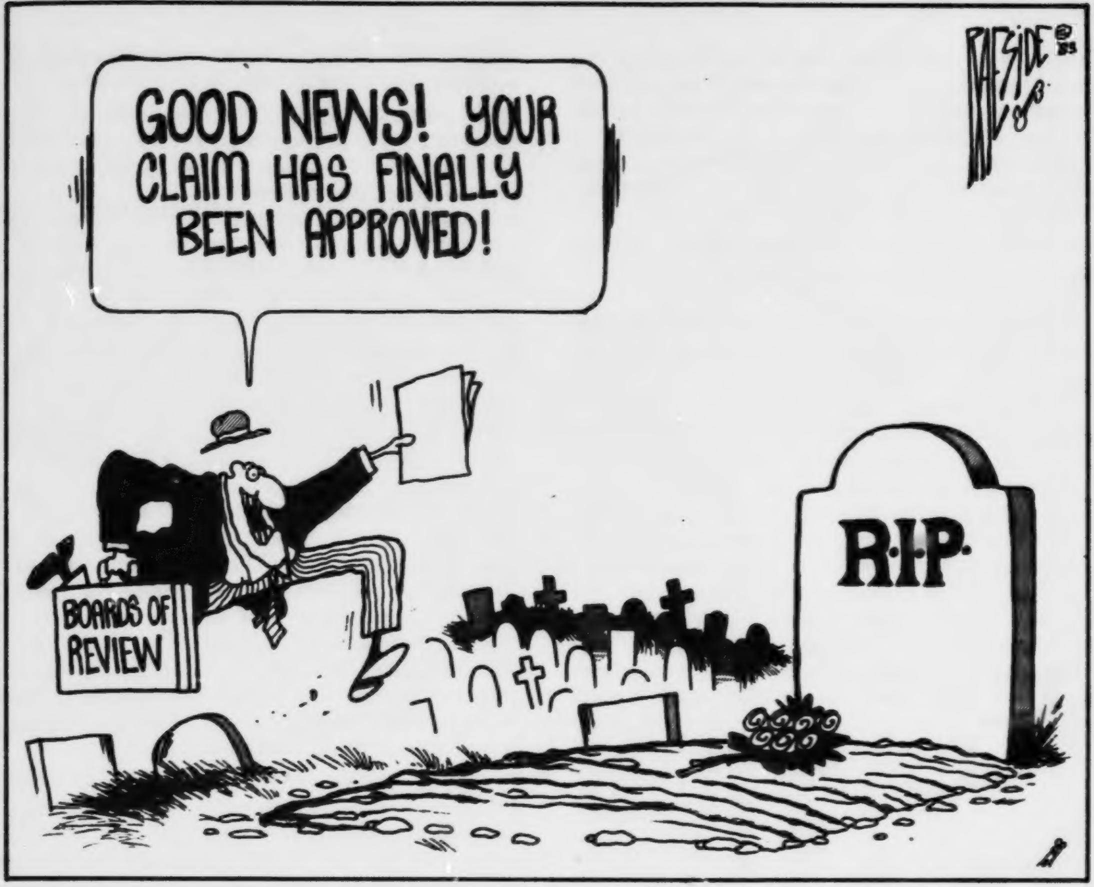
I have been aware of unreasonable delays such as these for a long time. I drew the problem quietly to the attention of the Ministry and the Legislative Assembly in my last (1981) Annual Report, stating (on pp. 89-90):

> "Appeals to the boards of review have been subject to extremely lengthy delays throughout the year. These delays have created extreme hardship for injured workers whose claim or part of it was rejected by a W.C.B. adjudicator and who must now establish their claim through a complicated appeal system. I have encountered such claimants who could not return to work because of injury. To get their appeal decided takes often a year or longer. In the meantime, they are forced to rely on social assistance. It is readily apparent that the long delays inherent in the present appeal system create manifest hardship and injustice. I know that the Minister of Labour is aware of the problem and I hope that he will succeed in bringing about changes soon to alleviate this problem."

Unfortunately very little has been done to resolve the problem. By my standards every complaint I receive about the Boards of Review could and should be declared substantiated on grounds of unreasonable delay. The delays can be explained and I sympathize with the Boards of Review for the lack of attention they receive from the Ministry of Labour but there is, in my view, no justification for the continued excessive systemic delays.

The victims of this delay often are not very articulate and do not have the skills and resources to draw public attention to their plight. Most of them suffer quietly and most are at a loss to understand what is happening to them. One appeal-bound worker wrote the following letter to her adjudicator in desperation:

> "I'm in a Catch 22 situation here because I can't get wage indemnity through my group insurance, while I am appealing your April


GOOD NEWS! YOUR CLAIM HAS FINALLY BEEN APPROVED!
BOARDS OF REVIEW
R.I.P.
RAESIDE

> 27th decision, especially because the WCB has already accepted my claim as a work-related injury.
>
> "I feel I have suffered long enough as a result of internal disasters within the WCB and I require an answer by October 20th, whether you accept or deny your responsibility. If I cannot get an answer by then, I will be forced to abandon my appeal, so I can at least pursue wage indemnity. Nevertheless, I am in a financial crisis and I need the money to try to salvage what is left of my credit rating and to afford to eat again."

The problem begins with the quality of decisions made by adjudicators of the Workers' Compensation Board; the number of appeals to the Boards of Review is on the rise. About 40 percent of the appeals are ultimately decided in favour of the appellant. Clearly, better decision-making at the primary level could reduce the number of appeals and the backlog of appeals to the Boards of Review.

Possible solutions have been the subject of intensive discussion and research. The Ministry of Labour solicited a management consultants' report which examined alternative methods of dealing with the increasing caseloads of the Boards of Review. The report was completed in June 1981. Fifteen months later, when no action followed from the study, I wrote to the newly appointed Minister of Labour, the Honourable R. H. McClelland, to ask what steps he planned to take to remedy the problems of delay. The Minister replied that the matter of delays at the Boards of Review was currently under active review. Many months later no corrective action has yet been taken.

This situation is deplorable. I see a number of possible adjustments to the procedures used by the Boards of Review which would shorten the appeal process. The Boards of Review could, for example, move to a two-step process whereby the administrative chairman would designate those cases suited to a one-member review (as opposed to a review by a full three-member panel). Qualifying applicants might choose to wait for a hearing by a three-member panel if they had concerns about the impartiality of a one-member review; the choice would be theirs. The experience of the Labour Relations Board attests to the potential value of one-member hearings. However, legislative change will be required to effect this reform at the Boards of Review.

The Boards of Review have a number of retired members who are willing to fill temporary vacancies caused by the illness and vacations of the present members. This simple measure would save months of appeal time by allowing all of the panels at the Boards of Review to function full time. However, the administrative chairman has no power to institute this reform and, once again, the ball is in the Minister's court.

After a Boards of Review panel hears a worker's appeal, it is not uncommon that six to eight months pass before the panel produces a written decision. One of the bottlenecks in the system is that only the legally trained chairperson is allowed to write up the decisions of the panel. The other two panel members are idle, while the chairperson's work piles up and delays become very unreasonable.

The Boards of Review should, in my opinion, engage all of their members in the writing of decisions. This possibility was considered by the management consultants but rejected because many panel members apparently lacked expertise in writing legal decisions. I agree, however, with one pragmatic union representative who pointed out that "many workers would rather have a rough and ready decision soon than spend months in suspense waiting for polished prose".

Solutions will not occur spontaneously and the problem is not likely to disappear. The Boards of Review have implemented several of the proposals made by the management consultants' report which were within their power to effect. These changes may have been successful in preventing further deterioration of the situation, but have not alleviated the basic problem of excessive systemic delays.

The problem may now require the attention of the Legislative Assembly. The present unreasonable delays deny administrative justice to all those who must rely on the Boards of Review for decisions on their appeals; for many the delays have devastating personal consequences. Several of the solutions I suggest here do not involve further expenditure of money and should be considered immediately.

2. Ministry of Transportation and Highways: Damage Claims Procedure

A major problem I feel I must bring to the attention of the Legislature involves the damage claims procedure of the Ministry of Transportation and Highways. I investigated this procedure on my own initiative after receiving several complaints from citizens who claimed compensation against the Ministry without success.

Two complaints were from people who claimed compensation for flood damage to their property. In one case, a grader operator plowed snow into a ditch adjacent to the complainant's property. The snow plugged the ditch and subsequent heavy rain and melting snow were diverted on to the complainant's property, flooding the basement of his house and causing considerable damage.

Based on these findings, I recommended that the Ministry compensate the man because I believed that the flood damage was a direct consequence of the actions of the Ministry's grader operator. He plugged the ditch which then could not handle the runoff during heavy rains. The Ministry took the position that it was not liable in law and refused to pay compensation. The Ministry did not accept that the operator should have foreseen this problem, that the ditch was inadequate, or that the flooding occurred only because of the snowploughing.

In a second case, I concluded that flood damage to the complainant's residence occurred because a culvert under a highway adjacent to the complainant's property was plugged with gravel, and the culvert was insufficient to handle heavy runoff. I was satisfied that no flooding to the property would have occurred had the Ministry not diverted a natural water course into partially plugged culverts. Again, the Ministry refused to accept my recommendation for compensation on the ground that it did not consider itself liable in law. That is, it did not admit to negligence in the maintenance of the culvert; nor did the Ministry admit that the plugged culvert caused the flooding.

The Ministry's present damage claim procedure involves the following four steps: first, the claim is received at the Insurance and Claims office of the Ministry in Victoria. It should be noted that not all claims reach this office. Some claims are dealt with at the district and regional levels without further referral. Second, acknowledgement is sent to the claimant. Third, the Insurance and Claims Officer sends a copy of the claimant's letter to the appropriate local Ministry official with a request for a report. Fourth, the Insurance and Claims office will either offer settlement or deny liability.

My evaluation of this procedure led me to the conclusion that this system ensured neither substantive justice nor procedural fairness. In substantive terms, I believe fairness requires that compensation be paid if damage to a person or his property is a direct result of the action of a government ministry or its employees. The Ministry's position is that unless the more stringent standard of legal liability can be met, it has no obligation and limited discretion to award compensation. In terms of procedural fairness, I recommended several changes. For example, I recommended that the Ministry take into consideration more than just a field report from a district or regional official before it determines the facts of the claim, and that claimants be entitled to be notified of appeal rights and of the reasons for adverse decisions when compensation is not forthcoming. The Ministry stated that it is considering these recommendations, but that it does not have the necessary staff at present to comply with all of them.

I believe the Ministry and I have different opinions on this because we have different views of the function of the Insurance and Claims office. The Ministry has accurately stated that I view the function of the office as that of an adjudicator, whereas it believes the function of the office is ". . . to review on behalf of the Ministry any claims made against the Ministry and to either acknowledge the Ministry's liability and settle the claim, or to deny liability on behalf of the Ministry . . ." "A claimant" . . . "had no right of appeal, but rather may continue in the pursuit of his claim, ultimately suing the Crown." In short, the Ministry maintains that the proper remedy for a claimant whose claim for compensation has been rejected by the Insurance and Claims office is a legal action for damages.

This creates a problem. Although the Insurance and Claims Officer may not be an adjudicator as a matter of law, in practice he is often the final arbitrator of a claim. This is especially the case if the amount of the claim falls within the jurisdiction of the Small Claims Court, where actions cannot be brought against the Crown, or where claimants can simply not afford the prohibitive costs of "appealing" to a superior court. In these circumstances, I believe claimants may well be left with the feeling that they have been denied their right to be heard by an impartial tribunal. I believe that a change in the law is necessary to remedy these procedural and substantive shortcomings. I now bring this matter to the attention of the Legislative Assembly.

3. Pesticide Use on Public Land

In my discussion of the Ministry of Environment in Part III, I have referred to some specific problems involving the Pesticide Control Branch or the Environmental Appeal Board. At this point, however, I wish to mention a wider problem which involves both these bodies in what one might call the "Pesticide Permit System".

Although the *Pesticide Control Act* covers a number of different areas, practically all the pesticide-related complaints I have received in the past three years have involved the issuing of pesticide permits. Such permits are required by B.C. Hydro, by forestry firms, by ministries of the provincial government, etc. whenever they wish to apply a pesticide to public lands or to a right-of-way. (The controversy arises mainly over herbicides such as 2,4-D which are generally used to kill either weeds or broad-leafed trees that might obstruct the growth of conifers.)

To summarize the process, the intending user first submits an application to the Pesticide Adminstrator (i.e., the Director of the Pesticide Control Branch). The application is a two-page document which provides some very basic information about the proposed use. The Administrator circulates copies to a Committee, composed of officials from four or five ministries and a federal official, and receives the members' comments. Guided by (but not bound by) the Committee's comments, the Administrator usually issues a permit to the applicant. The permit document contains all the special conditions of use specified by the Administrator, and its issuance is advertised in one or more local newspapers. At this point the public becomes aware of the proposal, and any objectors must appeal to the Environmental Appeal Board. The Board will then hold a hearing and will decide whether to uphold the permit as issued, or to insert further conditions for use. (Cancellation of a permit is a rare event.)

The public seems dissatisfied with this system for several reasons. Many feel that it is a great disadvantage to be placed in the position of opposing a decision already made by a public servant (the Administrator), rather than getting an opportunity to have input beforehand towards that decision. Others have noted that the composition and purposes of the Appeal Board are significantly different from those envisaged in 1975 by the Royal Commission on Pesticides and Herbicides. They feel that the Appeal Board's record of dealing with appeals indicates a strong pro-pesticide bias. They believe that the Board takes an unnecessarily narrow view of its mandate, and that it places the burden of proof on the wrong party during its hearings. Most complainants fear the effects of consuming wildlife, berries, or water which might be contaminated with pesticide, and do not believe the conditions of use specified on a permit will provide adequate protection, especially if there is unreported accidental spillage or carelessness during the application. Essentially it seems to me that most of the complaints I receive in this area are based on the fact that the functions actually performed by the Pesticide Control Branch and the Appeal Board differ considerably from the public expectations for these two bodies.

The public, or at least that section of the public which contacts the Ombudsman about these matters, appears to expect that, for instance:

(a) the application of pesticides to public lands will be controlled in such a manner that nobody in the vicinity will suffer any measurable level of exposure;

(b) before issuing a pesticide permit, the Administrator will always gather a considerable amount of basic information about the proposed site, both through the applicant and through inspection;

(c) the Administrator will verify that other options have been considered, and that the proposed use of the pesticide is the best option;

(d) the conditions specified in a permit will be adhered to, and any violations will normally be met with punitive action;

(e) the Administrator and the Board will take into account the findings of recent scientific studies, which may in some cases cast doubt on the suitability or safety of a previously-accepted pesticide;

(f) the Appeal Board will not extend the basic conditions (e.g., time limits, or area of treatment) of a permit, without providing the appellants with an adequate opportunity to study the implications of the extensions, and to appeal them.

Administrator and the Appeal Board, however, have rather different views of their own functions. In the first place, they both take the approach that Agriculture Canada in Ottawa is responsible for the verification and acceptance of data on the safety, effectiveness, and precautions for use of a pesticide. They feel that in general, once the Federal Ministry registers a pesticide under the *Pest Control Products Act*, provincial officials should not unnecessarily duplicate federal efforts; all that remains for them to do is to ensure that pesticides are used under the appropriate conditions, in compliance with directions on the labelling and any other special conditions appropriate to the location.

Further, the Administrator, with his relatively small staff, contends that he cannot necessarily meet expectations such as (b) to (d) above. The Board, for its part, sometimes allows appellants to present lengthy general evidence about safety and potential health hazards associated with the pesticide, presumably bending over backwards to avoid accusations of "gagging" witnesses. Later, however, if the Board's decision suggests that it attached less weight to such evidence than to site-specific considerations, the appellant may feel aggrieved.

Part of the present control system is based on recommendations in the 1975 report of the Royal Commission on the use of Pesticides and Herbicides. I have noted with interest many comments of the Commission in its final report, including the following paragraph on pages 253-4:

> "There was a general expression of a lack of credibility of government departments in matters of pesticide control. There was no clean cut evidence of lack of co-operation of government agencies with citizens. In the minds of citizens, however, was the impression that their concerns were being ignored. They saw the large pesticide users, private concerns or crown corporations, as having the ability to manipulate the regulatory process and do exactly as they pleased."

My own experience confirms this statement, nearly eight years later. That is exactly how many citizens still perceive the system. In a letter to one of my complainants, the Minister of the Environment has said that our Province already has "the most stringent pesticide legislation in Canada." I believe it is only potentially stringent. The Act and Regulations give a great deal of discretion to the Administrator (e.g., in terms of deciding what constitutes "an unreasonable adverse effect" of a pesticide; what information is to be provided in a permit application; or when a licence, certificate, or permit merits revocation) and to the Appeal Board. Essentially, it is the manner in which this discretion is used that determines the stringency of control.

It can be a difficult matter to substantiate complaints which ultimately refer to the exercise of discretion by a bureaucrat or board, particularly if there is neither a longstanding tradition or pattern of decision, nor an indication that the Legislature intended a particular direction to be taken. Let me make it clear that I am not impugning the motives of the Pesticide Administrator or the Appeal Board; they are carrying out their duties as they perceive them.

However, I have now been contacted about pesticide controls by persons ranging from members of the Legislative Assembly to affected citizens in remote areas, by organizations ranging from regional districts to environmental groups or societies, and I believe there is considerable anxiety over this matter. The Legislative Assembly might wish to examine in some way how well the present system matches the intent of the legislation, or the major recommendations of the Royal Commission, or the present expectations of the public.

4. Public Input No Longer Wanted In Forestry?

In my last annual report I noted that almost a third of the investigations in Forestry concluded in 1981 pertained to public input. I also noted that the Ministry had initiated a new public involvement program, and that a few wrinkles were to be expected with the development of any new program. I commended the Ministry, as I had in the previous year, for its pioneering efforts in the development of what appeared to be a genuine attempt to involve the public in the provision of advice for forestry planning.

It appears I spoke too soon. Although the actual number of public input complaints is down, several developments during 1982 have led me to the conclusion that I can no longer attribute the complaints about the public involvement program to "ironing out a few wrinkles". The Ministry had appointed a consultant on public involvement; during the past couple of years he had developed a set of Ministry guidelines for public involvement programs, had held training sessions for Ministry staff and information sessions for the public, and had assisted in the initiation of public advisory groups on certain forestry issues. He is now gone, and his position remains vacant—officially a victim of restraint.

Even more unsettling is the apparent reluctance on the part of the Ministry to implement its own carefully developed public involvement guidelines. Quesnel Lake illustrates the problem. During 1982 I investigated complaints from two groups in the Quesnel Lake area that the Ministry had refused to establish a public advisory committee to study a proposal to log part of the area. The Ministry had initially set up "storefront" sessions (see CS 81-056 in my 1981 Annual Report) to provide information on logging proposals; these were sessions during which the public could drop in, look at proposals and ask questions. A number of groups tried to use this framework, but found that the issues were varied and complex, and that the involved parties had diverging interests and concerns. The storefront approach failed to provide the level of public involvement which the public felt the situation warranted, or which the Ministry's guidelines seemed to indicate as appropriate.

The Ministry's public involvement guidelines seemed to support the complainants' view, and on that basis they asked that the Ministry establish a public advisory committee. When the Ministry rejected their request, they complained to me. My conclusion was that they were correct, and I recommended that the Ministry establish a public advisory committee. I must report, however, that I failed to persuade the Ministry to correct this situation. I must also report that I have not been given what I consider to be a satisfactory explanation of the Ministry's refusal to change its approach. The basic reason appears to be that the local manager made a decision that the "storefront" approach was adequate, and since he does not want to change the system, the Ministry will not require him to do so.

More recently I have noted that the Ministry has amended its public involvement policy so as to restrict further the role of the public. Under the new policy there is no longer a requirement for the local manager to consult with the public in choosing a public involvement method; there is no longer an opportunity for the public to influence the contents of Timber Supply Area plans (instead, there is an opportunity to "evaluate and comment on"); and there is no longer an opportunity for the public to develop and evaluate forest management alternatives for Timber Supply Area plans.

I find this situation very discouraging—not only because of the specific implications for Quesnel Lake, but also because of the implications for the whole of the Ministry's public involvement program. There are those who have charged that the program was only intended as a public relations exercise; I would hope that this is not so. Perhaps the Ministry underestimated the extent to which the public wanted to become involved in the planning of forestry operations, and, therefore, underestimated the time and effort required to operate the program. Perhaps specific individuals on the Ministry's staff oppose the program, while others are more open to the concept. Whatever the situation, it must certainly be confusing and frustrating for the public.

From my point of view, the matter needs clarification. The Ministry has developed a model public involvement program, and in the process has raised public expectations. It now appears that at least certain segments of the Ministry are unwilling to implement major provisions within the public involvement guidelines. The Ministry should now clarify the role of its guidelines and the role of its local managers in the implementation of that program.

5. Other Issues

Part III of this report contains detailed comments about ministries and other government agencies. In the comments section and in some complaint summaries I have made suggestions about the need for clarification of specific policies, practices or decisions. The issues raised there do not, in my opinion, warrant a special report; nevertheless I wish to bring these issues to the attention of the Legislative Assembly. To avoid unnecessary repetition I will merely list the cases or issues here and refer the reader to the details in Part III of this report.

a. The Superintendent of Credit Unions, Co-operatives and Trust Companies receives many complaints from disgruntled co-op members but is unable to do anything about them, unless there are some changes in the *Cooperative Associations Act*. See Corporate Affairs on page 43.

b. There are continuing problems with mining claims. Changes in the *Mining (Placer) Act* are required. See introduction to the Energy, Mines and Petroleum Resources Ministry's case summaries on page 52.

c. Waste disposal sites are creating problems throughout the province. New legislation may be needed to improve the situation. See introduction to the case summary section of the Ministry of Environment on page 54.

d. Native Indians did not need to have a licence issued under the *Wildlife Act* (section 2 of the former Act and section 12 of the new *Wildlife Act)* in order to hunt. The Ministry of Environment's Limited Entry Hunting program, however, now appears to take away that exemption after the word "licence" was replaced by the word "authorization" in the new legislation. My case summary (CS 82-058) raises the question: "Does the present situation reflect the intent of the Legislative Assembly, or does it merely represent a "clever" manoeuvre by Environment officials to circumvent the generality of the section 12 exemption?"

e. Deregulation may be the answer to problems arising from the transfer of vehicle ownership, particularly with respect to payment of Social Service Tax. Procedures are often overlapping and sometimes contradictory. *See* CS 82-071 and subsequent paragraphs.

f. The *Name Act* and the *Vital Statistics Act* contain several provisions that are improperly discriminatory, in particular against women. See Vital Statistics on page 76.

g. Provided economic conditions improve, the Legislature may wish to consider changes in the regulations governing the Agricultural Land Commission to alleviate the hardship suffered by land owners whose property is included in the Agricultural Land Reserve but does not allow them to earn a livelihood from it. *See* CS 82-162.

h. The Assessment Authority continues to have problems with assessment notice deadlines. A legislative change may be required to improve the situation. *See* CS 82-169 and preceding paragraphs.

i. Legislative changes are needed in the Insurance (Motor Vehicle) Act Regulation. See "Legislation Reform" and "Discrimination" on page 133.

PART II

COMPLAINTS: THE WORK OF THE OMBUDSMAN OFFICE IN 1982

A. COMPLAINANTS AND COMPLAINTS

In reporting on my office's work in 1982, I propose to follow the same format used in my previous two annual reports. While I will offer a few general comments here about complaint volumes and how my office handled the flow of complaints, detailed statistical information will again be presented separately in seven tables in Part VI of this report.

For my office the year 1982 was dominated by the fact that complaints increased dramatically in May and stayed high every month after that. Instead of receiving some 411 complaints a month as in 1981 we have had to deal with 700 and more per month in 1982. Towards the end of 1982 another increase occurred.

Figure 1 plots the complaint intake by month over the last three years, and demonstrates graphically the doubling of our complaint intake over two years.

My office received a total of 8,179 new complaints in 1982. This represents a 66 percent increase over 1981 (4,935 new complaints) and a 113 percent increase over 1980 (3,840 new complaints).

I can only speculate about what caused such a dramatic increase in complaints. Tough economic times, I am sure, contributed partly to the increase. Many of our social systems suffered a serious strain from increased demands and decreased available resources.

In addition to opening 8,179 new complaint files my office responded to many hundreds of other requests for which no complaint files were opened, and which are not included in the above total of 8,179 new complaints.

The figures presented below show the overall workload of my office in terms of active and closed complaints during 1982.

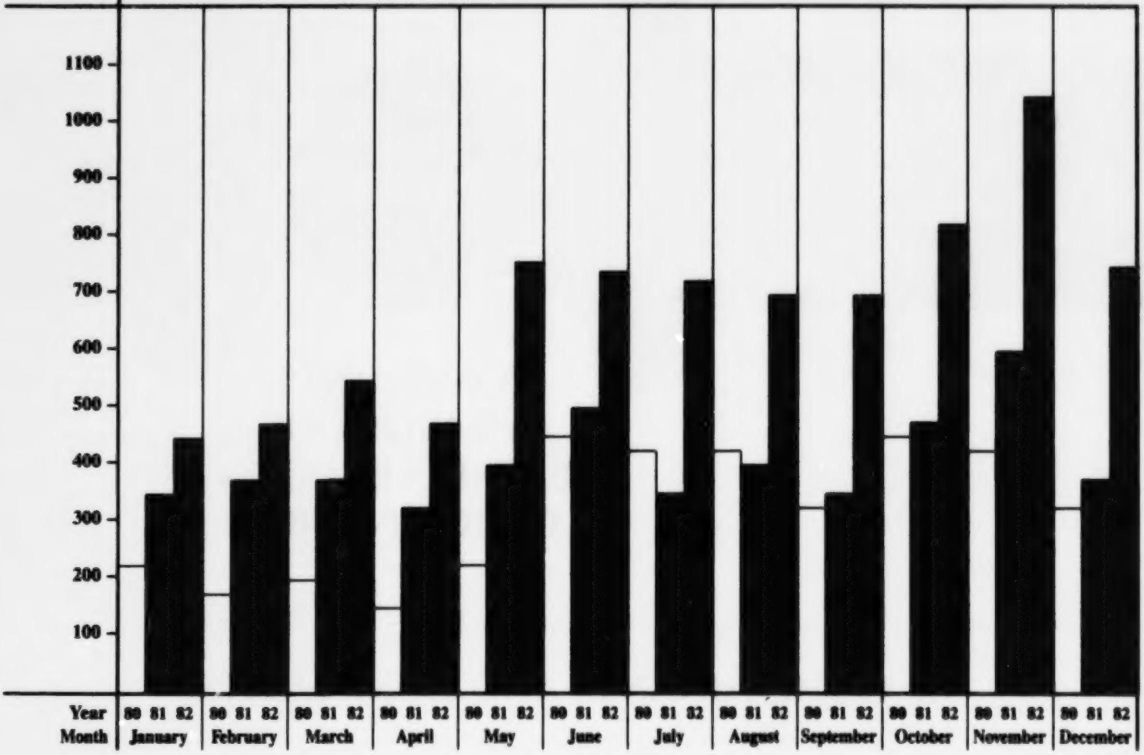
Complaint Totals

1979–1981 complaints carried into 1982	1,133
New complaints received in 1982	8,179
Total active complaints in 1982	9,312
Complaints closed in 1982	7,979
Complaints still under investigation at year end (December 31, 1982)	1,333

The data reported in the seven tables in Part VI of this report are based on all complaint files *closed* in 1982, that is the 7,979 jurisdictional and non-jurisdictional complaints that were investigated or otherwise disposed of in 1982.

FIGURE 1

Number of Complaints Received by Month, 1980–1982



The office has now been in operation for three complete reporting years and we may be able to make some meaningful comparisons.

Table 1 (see Part VI) details some statistical particulars of complainants and complaints for the year 1982. Most of the characteristics of complainants and complaints as expressed in Table 1 have remained stable over three years. There are three areas in which a change has occurred.

The number of complainants whose first contact with the office was in person or by letter has remained stable but a large relative increase in the use of the telephone has occurred in 1982 as seen below.

First Contact with Ombudsman Office

	1979/80	1981	1982
In person	780	1,012	855
Letter	1,080	801	1,042
Telephone	2,317	2,915	6,030
Other	20	37	52
Totals	4,197	4,765	7,979

Another change we observe is that more complainants contacted my Victoria office in 1982 than in previous years when relatively more contacted the Vancouver office first.

Complaint Initiated At

	1979/80	1981	1982
Victoria Ombudsman Office	1,847	2,016	4,766
Vancouver Ombudsman Office	2,165	2,395	2,965
Local Visit	185	354	248
Totals	4,197	4,765	7,979

Table 2 in Part VI gives a detailed breakdown of how many complaints were closed in 1982 per Regional District and allows a comparison between each district's population share and its share of our closed complaints. The only significant change I am able to discern is that Greater Vancouver is now significantly under-represented among closed complaints compared to the two earlier years.

I have also tried to aggregate population and complaint statistics over four larger regions of the province to check whether all regions have reasonably equal access to the Ombudsman over the years. The results are presented below.

Distribution of Complaints (Closed) and Population by Region (Percentages)

Region	Per Cent of B.C. Population	Per Cent of Complaints Closed in 1979/80	1981	1982
Vancouver Island and South Coast	19.4	22.4	23.7	26.8
Greater Vancouver, Lillooet, Fraser Valley	51.8	48.1	48.2	38.0
Okanagan, Kootenays	17.2	16.8	13.8	19.1
North Coast and Northern B.C.	11.6	10.0	13.0	14.9
Out of Province	—	2.7	1.3	1.2
Totals	100	100	100	100

Three of the four regions appear slightly overrepresented among closed complaints while Vancouver and the Lower Mainland are significantly underrepresented in 1982. I do not have an explanation for this.

The proportion of closed complaints that are within the Ombudsman's jurisdiction has varied a fair amount over the three years.

Complaints Closed by Jurisdiction and Year

		Number Closed	Per Cent
1979/80	Within Jurisdiction	1,888	45
(15 months)	Outside Jurisdiction	2,309	55
	Total	4,197	100
1981	Within Jurisdiction	2,757	58
(12 months)	Outside Jurisdiction	2,008	42
	Total	4,765	100
1982	Within Jurisdiction	4,128	52
(12 months)	Outside Jurisdiction	3,851	48
	Total	7,979	100

In 1982 some 52 percent of all closed complaints were jurisdictional compared to 58 percent in 1981 and 45 percent in 1979/80. Quite apart from the year-to-year change I think it is significant that my office increased by 50 percent the number of jurisdictional case closings in 1982 (compared to 1981). This was all accomplished without an increase in staff resources. I must state though that another such increase cannot be expected in the future. My staff have reached the limit in terms of productivity increases. If we receive more complaints in 1983 we will either need additional resources or we will have to curtail service to the public.

I am turning now to a discussion of the disposition of the closed jurisdictional complaints. Again, the details of dispositions for each Ministry and agency are presented in Table 3 in Part VI.

In terms of total complaints closed we find Human Resources, I.C.B.C., the Workers' Compensation Board and the Attorney General are consistently among the top four over the last three years. Four other Ministries (Consumer and Corporate Affairs; Transportation and Highways; Health; Lands, Parks and Housing) occupy fairly consistently over three years the positions 5 to 8 in terms of total complaints closed. While I mention these facts, I wish to point out that I do not think any significance should be attributed to the frequency of complaints against particular Ministries or Boards and Corporations. I believe the frequency of complaints is simply the consequence of frequent and/or intensive contact between a Ministry and the public, rather than a reflection of the quality of service or administration. I do try to provide an assessment of a Ministry's or Agency's quality of administration and service to the public in Part III of this report together with individual complaint summaries.

Table 3 in Part VI lists in broad categories the final disposition of all jurisdictional complaints closed in 1982 and for each Ministry and Board, Commission, etc. A short description of these broad disposition categories would be as follows:

1. The first column ("Discontinued", for short) represents those complaints that were not investigated and those in which an investigation was not completed. (A breakdown of reasons for discontinuation is presented separately in Table 6.)
2. The second column represents those complaints that were resolved by an authority to the complainant's and my satisfaction before my investigation reached the stage at which findings and recommendations were presented in writing. ("Resolved")
3. The third column lists complaints for which a correction could only be obtained after a formal finding on the merits had to be pressed. ("Rectified")
4. The fourth column lists those cases in which I found the complaint substantiated but the authority refused to implement my recommendation or no suitable remedy was available. ("Not Rectified")
5. The fifth and last column lists all those complaints that were found to be "not substantiated" after full and complete investigation.

A consideration of the last three years' jurisdictional complaint dispositions shows that while the numbers increased each year the relative distribution between the major disposition categories remained remarkably stable, as shown below.

Disposition of Jurisdictional Complaints: 1979–1982—Numbers of Complaints

	1979/80	1981	1982
Discontinued	864	1,220	1,926
Resolved	506	601	1,169
Rectified	59	180	135
Not Rectified	0	74	18
Not Substantiated	459	682	880
Totals	1,888	2,757	4,128

Disposition of Jurisdictional Complaints: 1979–1982—Percentages

	1979/80	1981	1982
Discontinued	46	44	47
Resolved	27	22	28
Rectified	3	7	3
Not Rectified	0	3	1
Not Substantiated	24	25	21
Totals*	100	101	100

* Totals may be more or less than 100% because of rounding.

As in past years I again report in Tables 4 and 5 an approximate assessment of the degree of assistance my office provided to complainants with non-jurisdictional complaints.

Table 7 in Part VI again lists our assessment of how many complaint investigations (among the resolved and rectified complaints) lead to a procedural or practice change as opposed to merely affecting the individual complainant. Part IV of this report enumerates a selection of those changes in procedures and practices the various authorities agreed to during 1982.

B. INVESTIGATION GOALS AND STRATEGIES

The legislation establishing the Ombudsman office is very broad and leaves a great deal to the discretion of the incumbent. At the beginning of this report (in the Administrative Justice Code) I have given a more detailed account of the standards I use when my office audits the administrative actions of officials. In Part III of this report some 250 complaint investigations are summarized that will give a fairly detailed overview of the substance of complaints that reach my office. In this section I wish to inform the Legislative Assembly about some practices and strategies my office has adopted and developed over the last three years to cope with the ever increasing number of complaints in a rational and efficient manner and to make the best use of the limited resources allocated to my office in the estimates.

Pre-Investigation Strategies

Ombudsman investigators may be swamped with countless and amorphous demands for investigation. To avoid their being paralysed by too many demands or rendered ineffective by fully investigating each and any complaint regardless of its significance for the system it was important to recognize and refine two processes which happen before we begin an investigation.

The first is the intake process itself; the second is the decision-making process that may lead to a refusal to investigate or diversion of the complaint to other appeal procedures or, failing that, a conscious decision that this complaint requires a full investigation.

My office had to refine the intake procedures with a view to allocating existing scarce resources appropriately and productively. My staff attempt to focus the complaint at the pre-investigation stage: either the intake person or the specialist investigator to whom the case is directed will contact the complainant by phone, usually to narrow down a general complaint to a specific issue that can be investigated and decided. It is also important at this stage to ascertain from the complainant precisely what remedy he seeks. As a result the Ombudsman's inquiry/investigation becomes more goal-oriented and, I believe, more useful to the complainant. Many complaints have the capacity to turn into mini-Royal Commissions of Inquiry, but only very few warrant such an allocation of public resources.

Once the complaint is clearly focused and the remedy sought is identified, a rational decision can be made about what the Ombudsman office will do with the complaint and for the complainant. The decision itself may be a refusal to investigate on the ground that the complainant has another administrative objection procedure or recourse reasonably open to him. In making such a decision my office exercises its discretion in two ways: the appeal procedure to which the complainant may be referred must be a reasonable one objectively, and the complainant must, subjectively in our judgment, have the resources (money, time, know-how and psychological ebullience) to survive the appeal channel(s) into which we are about to funnel him. We do not automatically demand that the complainant exhaust all existing appeal channels. In our experience it is more likely that the channels exhaust the complainant. He is worn out and frustrated, a state of affairs to which the Ombudsman should not wish to contribute further.

Nevertheless as an office the Ombudsman cannot become a substitute for existing appeal procedures and one of our aims is to teach complainants how to use existing appeal channels effectively. We advise a complainant of specific appeals open to him, reassure him that in our experience these appeals are useful and invite him to return to us if he experiences problems with the appeal process or remains aggrieved by the outcome. One of the goals my office pursues through this strategy is to teach the complainant to become self-sufficient in coping with bureaucracy. We do not want to create a clientele dependent repeatedly on the services of the Ombudsman office. The other side of the same coin is that we work with authorities to ensure that their objection and appeal procedures are reasonable, accessible and easy to use.

Inquiries and Investigations

If the complaint cannot be declined or diverted, an investigation is usually necessary and justified. Perhaps the most important procedural differentiation we make is between an inquiry on the one hand and a full and formal investigation on the other. Because a full investigation means a serious commitment of the office's resources, we initially tackle most complaints by way of an inquiry with the appropriate government authority; only if the inquiry fails to produce a satisfactory resolution will we step up the process to a full investigation. In practice the borderline between the two processes, inquiry and investigation, is not as clear and distinct as the above comment might suggest. As a rule of thumb, an inquiry becomes an investigation when we ask the authority to supply us with something more than answers over the phone, e.g., when we request a file or the authority's written position on a complaint.

An inquiry is a simple and informal process intended to be quick and usually oriented towards resolving the complaint to the satisfaction of both the complainant and the authority (as opposed to a full investigation whose aim it is to make a formal finding on the merits of the complaint). An inquiry may serve any one or a combination of the following purposes: (a) to meet a complainant's request or give him his remedy, assuming the authority has no objections; (b) to suggest to the authority a quick or obvious resolution of a complaint; (c) to suggest to an authority that they may wish to review their own decision in light of any facts or considerations brought to their attention by the complainant or the Ombudsman, or simply to obviate the need for an Ombudsman investigation; (d) to ascertain that authorization (law or regulation) exists for the making of a particular decision and/or what relevant facts or considerations had been taken into account in making the decision in question; or (e) to acquire any other information which might lead to discontinuation of our inquiries if, e.g., a decision has not been made as yet or an available appeal exists or other factors are present warranting the exercise of the Ombudsman's discretion to discontinue an investigation. Alternatively the inquiry may produce information which points out the need for a full or formal investigation.

An inquiry is thus primarily an instrument for settling or resolving a complaint. If the inquiry does not lead to a settlement, the inquiry becomes part of the Ombudsman's decision-making process which may commit us to a full investigation.

About half-way between an inquiry and a full Ombudsman investigation is a formal request by the Ombudsman to an authority that it conduct its own investigation and inform us of the results. Such a request for bureaucratic self-investigation is inappropriate when suspicions or serious allegations about improper conduct are already apparent in the complaint. The B.C. Corrections Branch, for example, has an Inspections and Standards Division. We frequently ask them to investigate standards-related complaints (with the informed consent of our inmate-complainant) but when we receive allegations affecting the safety of inmates we usually conduct our own investigation.

Investigation as dialogue with complainant and bureaucrat

In my experience it helps to think of the relationship between the Ombudsman/investigator and the complainant as a dialogue or an exchange process. This is not only true at the intake stage, which I have already commented on, but throughout the investigation, and particularly at any stage at which a decision is made about the course of an investigation, like diversion, resolution, recommendation etc.

A complainant with multiple complaints can tie up a disproportionate share of an Ombudsman's resources. Our practice is to ask the complainant to priorize his complaints. We will then investigate his most important complaint and open his second complaint only after the first has been concluded satisfactorily. This strategy with persistent complainants evolved over time as a defensive measure and ended up being a rational way of allocating public resources to competing complainants in a defensible and also, I hope, humane manner.

We think of the complainant as a resource that we need to tap in order to maximize our efficiency. The complainant has information that will, in the hands of an experienced investigator, speed up the investigation and disposition of a complaint.

The former Danish Ombudsman, Mr. Nordskov Nielsen, once explained to me his more formalized and institutionalized exchange process in which the Ombudsman initially acts apparently only as a facilitator: he forwards a copy of the complaint to the bureaucracy with a request for an official position on the complaint. He copies the official response to the complainant and solicits his comments in turn, and back and forth until most issues are clarified. The Ombudsman, of course, makes a finding about the merits of the complaint in the end, but both the complainant and the bureaucrat play very active roles in this process.

I like the idea itself even though I could not justify the time this process consumes. Instead, my investigators use the phone almost exclusively. The complainant is informed by my investigator of the official position; the complainant counters with his information or arguments and if my investigator finds them reasonable, relates them back to the official.

The ultimate in speed and directness such a process can generate was developed by the Alaska Ombudsman. When investigators are in phone conversation with complainants they do, on suitable occasions, turn the call into a conference call by getting the bureaucrat directly on line and talking to the complainant. The Ombudsman investigator is in the middle and controls the exchange in the interest of settlement, conciliation and other values.

Ombudsman legislation requires that the government or official be allowed to make representations to the Ombudsman before the Ombudsman can make "adverse" findings. I believe the complainant is entitled to equally fair treatment if, and before the Ombudsman concludes that his complaint is not substantiated or not justified.

Hearing the complainant should in any case be done in the interest of fairness, but it also has other beneficial consequences: it demonstrates to the complainant that the Ombudsman is open to argument; it protects the Ombudsman against errors that the complainant can bring to his attention before a final decision is made and it improves the quality of our product: we end up with a better and more durable decision and our relations with the complainant remain intact, despite the fact that we may find his complaint not substantiated.

Bureaucrats are as human as complainants, sometimes more so. What I said about the Ombudsman's dialogue with the complainant applies with equal validity to the bureaucrat. A continuous dialogue or exchange process between the Ombudsman/investigator and the public official serves at least two purposes:

> (1) treating the official as a resource with information, solutions, and feelings enhances the Ombudsman's mission of resolving specific complaints to the satisfaction of both sides and everyone ends up a winner;
>
> (2) while the Ombudsman's exchange with the complainant is usually a one-time affair, his relationship with the bureaucrat is a frequent and continuing process. We need and appreciate the official's assistance and co-operation almost daily.

The dialogue between the Ombudsman/investigator and public officials also serves as a continuing method of setting and refining standards and expectations for official conduct. Professional public servants have much to contribute in such a dialogue. At its best the process produces practical reconciliation between the Ombudsman's administrative justice code and the exigencies of the daily decision-making process.

System-oriented investigations

The ultimate purpose behind the establishment of the Ombudsman is the creation of a political and bureaucratic environment that conforms with the democratic ideal and enhances the democratic political culture. The Ombudsman represents a serious institutionalized effort to bring the reality of the citizen's bureaucratic experience closer to the ideal of democracy.

To achieve such an impact on the British Columbia system of public administration I have from the outset considered it an important part of the Ombudsman's role to contribute to administrative reform. Such cases are assigned some priority as they may affect potentially many more people than the immediate complainant who brought the problem to us. Beyond looking for general improvements in practices and procedures of all public authorities we occasionally deal with broad investigations, sometimes using the Ombudsman's right to initiate investigations on his own motion.

My investigators occasionally visit ministries, prisons and other institutions in the course of normal investigations of individual complaints. During those visits careful observation will bring conditions to my attention which may be questionable or unacceptable by today's standards. Many people will not complain or are unable to perceive or articulate complaints. To supervise public administration effectively I recognize the need to find the problems that do not normally reach me for a variety of reasons. One of the oldest and most effective control mechanisms is an inspection. An inspection can reveal weaknesses that have never occurred to the administrator who has been close to the situation for years. To date my office has not had the experience or the resources to develop this technique adequately.

Economy and parsimony in investigations

A complaint from an aggrieved citizen can be at one and the same time extremely important to the complainant and trivial or quite inconsequential for the system as a whole. One might take the view that the establishment of an Ombudsman office *eo ipso* sanctioned the allocation of public resources to these otherwise inconsequential complaints. In organizing the B.C. Ombudsman office I have tried to reconcile the needs of individuals and the necessarily limited resources of the community through the various strategies outlined above.

I have chosen the words "economy and parsimony" in relation to investigations with good reason. Webster's New Collegiate Dictionary defines "economy" as the "efficient and concise use of nonmaterial resources for the end proposed"; and "parsimony" has two meanings: (1) parsimony means "economy in the use of a means to an end" and (2) "the quality of being careful with money or resources".

I justify the various stages of our investigation process in the name of a variety of values: the focussing of complaints at the intake stage makes our investigation efforts more goal-oriented and relevant to the complainant; inquiry—instead of full investigation—is oriented towards resolution of real problems as opposed to determining blameworthiness; the mode of inquiry/investigation we use—dialogue with complainant and bureaucrat—can be seen as an attempt to mobilize all participants' resources and goodwill to achieve an outcome with which both sides can be satisfied. I also maintain that these strategies contribute to economy and parsimony in the Ombudsman's work. The process from intake to full investigation is geared towards resolution of problems with the least expenditure of resources, or towards refusal to investigate or diversion where the cost of an Ombudsman investigation is not justifiable. To escalate a case to a higher level of processing requires justification of one kind or another: a resolution is not possible, both sides maintain they are correct, or the complaint has wider significance and implications for this ministry or policy and warrants a full investigation. My office also uses Ombudsman initiated investigations and a few related techniques to produce administrative reform which will benefit more than one individual and which often obviates the need in the future for people to make a complaint.

I hasten to add that I did not set out to develop economical and parsimonious investigations. Circumstances forced the necessity on me.

As Ombudsman I strive for economy and parsimony in allocating public resources to individual complaint investigations. Only if I am successful in that can I retain sufficient resources to address system related questions adequately. Individual and system oriented investigations, however, are not unrelated and mutually exclusive. Any individual case investigation may have system consequences and systematic investigations can produce results efficiently for many individuals.

PART III

COMMENTS ON MINISTRIES AND COMPLAINT SUMMARIES

MINISTRIES

MINISTRY OF AGRICULTURE AND FOOD

Declined, withdrawn, discontinued	4
Resolved: corrected during investigation	1
Substantiated: corrected after recommendation	1
Substantiated but not rectified	0
Not substantiated	4
Total number of cases closed	10
Number of cases open December 31, 1982	6

In last year's Annual Report, I listed two complaints involving the Ministry's Farm Income Insurance Program. This year, I have continued to receive complaints concerning the provision of information to ranchers and farmers about eligibility criteria and deadlines for participation in the insurance scheme. These investigations are currently in progress.

Hot tomato

My office received a complaint from a tomato grower that the Ministry of Agriculture and Food owed him income insurance benefits for the produce he had grown from 1975 to 1978. The grower had insured his tomato produce with the Ministry through the Farm Income Insurance Plan.

The Ministry had only paid benefits for part of the producer's crop on the basis that some of his tomatoes were grown in greenhouses which were not artificially heated as required by the Plan.

The producer claimed that all of his greenhouses were artificially heated, although some were not heated in the traditional way but employed an innovative and energy-efficient heating method. The tomato grower had also added heating pipes around the inside perimeter of these greenhouses in 1976. The Ministry disagreed that these greenhouses were artificially heated, and the grower did not receive income assurance benefits for tomatoes grown in these greenhouses.

My office asked an independent agricultural expert what constituted an artificially-heated greenhouse. After receiving the expert's opinion, my office recommended that the Ministry recognize these greenhouses as artificially heated after 1976, and pay the producer benefits for 1977 and 1978. The Ministry agreed that the addition of heating pipes around the perimeter of the greenhouses made the produce grown in these structures eligible under the Plan. As a result, the Ministry paid the producer $11,499.99. (CS 82-001)

Declined, withdrawn, discontinued	164
Resolved; corrected during investigation	130
Substantiated; corrected after recommendation	10
Substantiated but not rectified	1
Not substantiated	114
Total number of cases closed	419
Number of cases open December 31, 1982	122

The Ministry of Attorney General is responsible for a wide range of functions, from the Film Classification Branch to the Coroner's office. The bulk of complaints received, however, relates to two of the Ministry's responsibilities, Corrections, which accounted for more than half the complaints closed, and the Court systems. Complaints concerning Court Services, the Court Registries, and the Sheriff Services increased by 28 percent last year, whereas the total number of complaints against the Attorney General increased by only 17 percent during that period.

SMALL CLAIMS COURT

Perhaps the rising number of complaints relating to the Court system reflects the public's increasing tendency to resort to the Courts in times of economic hardship. In any event, I have received a substantial number of complaints involving the Small Claims Court system and have been successful in instituting the following changes which will increase the public's awareness of how the system works.

Debtors must be informed of their rights

The sheriffs seized a man's car to satisfy an order for a debt. Later the man complained to my office that no one had informed him of his right to exempt from seizure up to $2,000 worth of his personal belongings. Section 66 of the *Court Order Enforcement Act* requires the sheriff to allow the debtor to select goods up to $2,000, and to make every reasonable effort to tell the debtor of the services available under the *Debtor Assistance Act*. It is crucial that the advice be given promptly, as the debtor has only 48 hours in which to select his goods.

I was not able to do anything to recover this man's losses, but I did achieve a change which will ensure that future debtors know their rights. With co-operation from the Debtor Assistance Branch, the Attorney General prepared an information sheet informing debtors of their rights, which will be handed out by the sheriffs at the time of the seizure. (CS 82-002)

And so must creditors

A creditor contacted my office after an abortive attempt to seize goods to satisfy a debt. She had chosen this method after consultation with Small Claims Court Registry staff, but had never been informed of the $2,000 exemption of goods available to the debtor.

Earlier contact with the Ministry of Attorney General had resulted in the introduction of a policy whereby all debtors are informed of the exemption. Court Services staff readily agreed that the creditor should also be notified to avoid loss of the execution fee ($50).

A draft "notice to judgment creditors" has been prepared for display in Court Registries. Creditors applying for a warrant for execution will also get a copy. The notice clearly states that a creditor whose debtor has minimal possessions may not only find that he can't collect the debt, but he will also have to pay the sheriff's fee for the unsuccessful execution. (CS 82-003)

A different aspect of the public's right to information when dealing with Small Claims Court is illustrated by a complaint received about the difficulty people had in getting information from the Small Claims Court Registry in Surrey.

Call back later

When a complainant phoned to get some information, he was told to call back between 3 p.m. and 4 p.m. The complainant thought that a Small Claims Court Registry should be more accessible to the public than that.

My investigator contacted the Court to see whether this actually occurred. The Registry manager said the workload had increased significantly over the last year, while their staffing had remained unchanged. To catch up with the backlog of work, he was asking the public to call between 3 p.m. and 4 p.m.

Together with a local judge who was interested in the same problem, my investigator suggested to the manager that the philosophy of the Small Claims Court was to be accessible in an immediate way. Limiting phone hours at the Registry was partially blocking this important avenue for the public. The manager agreed, and phone hours were returned to normal. (CS 82-004)

[illegible]

What price justice?

As a result of two complaints from people who said they had not been notified of orders for payment made against them in Small Claims Court, I found out that Registries do not automatically send out copies of any order made by a court. A check of this practice in other provinces showed that in Alberta, Manitoba and Saskatchewan, equivalent courts do send a copy of judgments to all parties involved in the action. A second concern was that parties were not routinely informed of their rights to appeal a decision they believed aggrieved them. Unfortunately the time for appeal was brief (14 days) and had sometimes passed before the appellant got the correct information.

Court Services dealt promptly with the second concern, posting appeal information notices in all Registries, and the problem became less acute when the Act was amended to allow an appeal period of 40 days. Unfortunately, I was not able to convince the Attorney General that the justice argument outweighed the argument of extra costs, when it came to notifying all parties of the judgment made. (CS 82-005)

[illegible]

Many of the complaints about the Sheriff Services received in 1982 were also about the execution of orders against debtors. Another major area of concern [illegible]

Belongings disappeared

A prisoner told me that a sheriff on escort duty took the key to a locker, containing clothes, money and documents but failed to include the key on the list of his belongings. The prisoner said the locker was opened and all items were removed while he was in custody.

My staff investigated the case, but were not successful in obtaining the return of the goods or the identity of the individual responsible for the alleged theft. During the investigation, however, I learned that the local lock up facilities (222 Main) did not follow the procedures applied in the rest of the province for inventory of a prisoner's effects. As a result of the investigation, the Attorney General agreed that the local lock-up should "tighten up" its procedures and, in particular, that each prisoner's signature should be on the list of goods taken from him. This change should prevent any such problem in the future. (CS 82-006)

On the brighter side, and typical of the good co-operation my staff receive from most local sheriffs is the following case.

Hide and seek

A woman contacted my office regarding a delay by the Sheriff in enforcing a maintenance order, which allowed immediate "in-default" time of 10 days if monthly payments were not met. The order was three months in arrears. Investigation of the complaint showed that the complainant's husband was adept at avoiding authorities. With my encouragement, the Sheriff agreed to make this issue a priority and was successful four days later in obtaining all the money owed. (CS 82-007)

CROWN COUNSEL AND CRIMINAL JUSTICE DIVISION

In 1982 I completed a memorandum of understanding with the Ministry of Attorney General regarding my role in investigations of complaints against Crown Counsel and the Criminal Justice Division. My office cannot examine areas of the Attorney General's absolute discretion, such as the decisions whether or not and in what manner to prosecute an individual case. Purely administrative acts, however, even in this area could be examined by my office. Examples here are the Crown's notification to victims or witnesses of changes in court dates, delay in replying to letters, and not explaining to a victim his or her right to apply for restitution.

No deductible

A complaint reached my office that Crown Counsel notified a person not to attend court, but failed to postpone the hearing. As a result, the complainant was not able to defend her case regarding a hit and run accident and was charged the $150 deductible by I.C.B.C.

Investigation confirmed the allegations, and I notified I.C.B.C. of the problem. I.C.B.C. withdrew the imposition of the "deductible" and agreed to review liability in this case. (CS 82-008)

Bicycle in custody

A woman complained to me that neither Crown Counsel, nor the Probation Service had assisted her in obtaining restitution when her son's bicycle was stolen by other juveniles. Investigation showed that the bicycle had been in the custody of police all the time, and that this information had never been communicated to the probation officer or the victim. The bike was returned to the victim. (CS 82-009)

Double the trouble

I received a complaint against the Crown Counsel who maintained two parallel files on an offence, resulting in the complainant's mistaken arrest and detention. Investigation revealed that the error originated with the local police force (Vancouver) who laid two identical informations. The complaint was resolved when the police force offered a cash settlement of $1,500 as propitiation for the inconvenience to the complainant. (CS 82-010)

[illegible]

Judge's interest helps

A community legal assistance society complained that its clients experienced difficulties getting peace bonds. Persons who feared personal injury who went before a Justice of the Peace without a lawyer to represent them, were sometimes not allowed to lay an information.

The decision of a Justice of the Peace how to issue process once an information is laid is a judicial, not an administrative action. In this complaint, however, I was not required to consider whether or not I had authority to investigate, because the problem was also of concern to the Provincial Chief Judge. The complaint was resolved when the Chief Judge offered to institute additional training for Justices of the Peace with respect to the issuance of peace bonds. (CS 82-011)

Ministry acted properly

The complainant contacted my office after the Attorney General refused to conduct a public inquiry into alleged misconduct by members of the R.C.M.P. The complainant felt the R.C.M.P.'s internal inquiry into his complaint was not impartial and requested a public inquiry under section 40 (4) of the *Police Act*.

Investigation by my office showed that the Ministry had acted in accordance with the law, and that such an inquiry, while possible with regard to municipal police forces, is unconstitutional if applied to the R.C.M.P. This situation may change as the federal government is contemplating legislation which would allow a joint federal-provincial review of public complaints against the R.C.M.P. (CS 82-012)

Gun replaced

After four years of trying to track down responsibility for the destruction of his handgun, a complainant asked for my help. He had been placed on a court order requiring him to surrender the gun for one year, but at the end of that year, the gun had been destroyed by the R.C.M.P. Nobody was quite sure why. Perhaps the documents outlining these conditions had been "misplaced" between the Courts and the police.

I never did get to the core of the problem. Instead the Chief Provincial Firearms Officer, who had not even been involved in the case, resolved the complaint by offering to replace the "lost" gun. My complainant called recently to say that he had received his replacement, and was delighted by this generous resolution. (CS 82-013)

Happy reunion after 11 years

In 1980, a woman whose children had been abducted and removed from Canada nine years ago asked for my help in obtaining government assistance in her search for the children. My enquiries revealed that a number of government agencies had given all the assistance they were able to provide. Her complaint was, therefore, not substantiated and I was unable to assist the complainant in advancing her search. But there is a happy ending. My complainant's children returned to Canada and their mother's care in the spring of 1982, and I was happy to hear that they have settled into their new environment. (CS 82-014)

Sorry, wrong name

A young man in Port Hardy was asked to appear as a witness for the Crown at a trial in Campbell River. After appearing at the trial, he submitted a request for travel expenses. He complained that six months later, he had still not been reimbursed for his travel costs.

I contacted the Court Registry in Campbell River. One official remembered issuing a cheque to our complainant and added that the cheque had already been cashed. When the returned cheque was examined, however, it was clear that it had been issued to the wrong person. The first name on the cheque was incorrect, and a relative with the same last name had cashed the cheque. The relative refused to give the money to our complainant.

The Ministry agreed that it was in error and issued a new cheque to the correct person. When the Ministry expressed concern over the loss of the first cheque, I suggested it contact the local R.C.M.P. and press charges to recover the money. (CS 82-015)

[redacted]

Hospital death

The complainant approached me following the inquest into the death of his son at Riverview Hospital. The son had resided at the Hospital for almost one year before his death. He suffered from behavioural disorders that were manifested in displays of aggression and such attention-getting activities as forced vomiting. One morning the Hospital staff discovered the complainant's son dead in his room.

The Coroner convened an inquest to investigate the circumstances surrounding the death of the complainant's son. At the inquest the jury concluded that the young man had died of acute kidney failure. The jury made no recommendations regarding the medical attention given to psychiatric patients. The complainant was not satisfied that the inquest had examined adequately the circumstances surrounding his son's death.

My investigator discovered that the deceased had displayed some symptoms that could be associated with kidney failure in the weeks immediately preceding his death. These symptoms had not been acted upon by the Hospital staff. I asked the Coroner to conduct further investigations into the matter and to decide if another inquest was warranted.

The Coroner consulted with a medical expert and discovered that the deceased had died of elevated blood potassium, a condition that precipitated the kidney failure. The potassium could have been released into the blood during the patient's outbreaks of violence. The Coroner concluded that another inquest was not warranted but cautioned the staff of mental institutions to watch carefully for medical symptoms that might be masked by behavioural problems.

The complainant was satisfied with the thorough remedial investigation conducted by the Coroner. (CS 82-016)

Motorcycle death

The complainant's son had died in an accident while driving a friend's motorcycle. Apparently he had failed to negotiate a corner on a winding road and had died of head injuries sustained because he had not been wearing a helmet.

The motorcyclist's mother began to suspect foul play when she received conflicting stories but little substantial information from the authorities that had investigated the accident. Her requests for information to the local Coroner and the Office of the Attorney General went unanswered. She approached me for help.

My investigator's inquiry received a complete response. The Coroner dispatched a Regional Coroner to investigate the death of the complainant's son. The Coroner forwarded a copy of the Regional Coroner's report to the complainant. He also offered to provide copies of the pathology and toxicology reports to the complainant's family doctor if she so desired. I closed my file, satisfied that the Coroner had resolved the complaint. (CS 82-017)

[redacted]

[illegible]

[illegible]

[illegible]

[illegible]

Inmates should know . . . or be told

An inmate at the Lower Mainland Regional Correctional Centre complained that he required protective custody but that on transfer from Vancouver Island, he was placed in jeopardy among general population inmates. Almost immediately he received threats, and he started a fast to underline the seriousness of his request for separation from general population inmates. He did not feel safe anywhere at the Lower Mainland Regional Correctional Centre and requested transfer away from the institution.

Placing a protective custody inmate with general population inmates is a serious error which could result in physical injury to the inmate. The institution quickly remedied this error. The matter of transfer remained outstanding until several reviews were held by the classification officers who decided on movement of inmates between institutions. It then became apparent that the inmate was not given adequate reasons for the decision made regarding his tranfer request. I recommended that the Corrections Branch implement procedures to inform each inmate of the reason for a decision not to transfer or to transfer against his will, and that these reasons be given in writing. The Corrections Branch will now advise inmates of the reasons and how they may obtain the reasons in writing from the Director of Provincial Classification. Additionally the Corrections Branch has now included a comprehensive outline of provincial classification criteria and procedures in the Manual of Operations for adult institutional services. (CS 82-018)

[illegible]

Unauthorized disclosure

After a few months of employment, a probationer was confronted one morning by his employer about his criminal record. In anger the probationer quit his job on the spot.

The probationer was aware that a friend of the employer's was a probation officer. He felt that certain of the information known to his employer could only have come from a document such as a pre-sentence report. He suspected that his employer's friend had disclosed this confidential information.

My investigation disclosed that the employer had been concerned about a number of incidents at the workplace which, although explainable, had caused her some consternation. The employer then raised these concerns with the probation officer acquaintance.

The probation officer advised the employer to confront the probationer about these concerns and find out whether they could continue to work together. He further volunteered to set up a meeting involving the employer, the probationer and the latter's current probation officer. He also checked out the criminal record of the probationer and imparted some information from this record to the employer.

The employer confronted the probationer but very little was said before the latter became angry and left.

It is unclear exactly what information from the complainant's record was transmitted to the employer but the probation officer gave some information to the employer and this happened because they were acquainted. The probation officer used his office to obtain information about an individual about whom he would not have sought such information were it not for the concerns voiced by his friend.

It appears that the probation officer was not acting with malice. He was trying to help with resolving a problem. The probation officer was regarded as a good and effective worker.

In a strongly-worded letter to the probation officer, I pointed out that while his actions may have been well-intended, and he was seeking to achieve a resolution to a problem he acted contrary to the oath of confidentiality he took when he became a public servant, and such an action had to be viewed as a serious matter.

When, as a requirement of law, a public servant furnishes information that comes to his attention during the course of his work (as might be required under the *Family and Child Service Act* or the *Ombudsman Act*) such disclosure is permissible. When a public servant uses his office to obtain information for the benefit of personal friends or acquaintances, and he does so other than in direct relation to his work role, he clearly breaches the trust of his office.

My recommendation took into account the fact that the probation officer was not acting with malice. Therefore, I did not recommend any discliplinary action. A meeting between my investigator, the probationer and the probation officer was arranged. The probation officer expressed his regret about the incident and apologized. In view of the fact that the probationer accepted the apology, I considered this a satisfactory resolution. (CS 82-019)

DISCIPLINARY ISSUES

Last year I reported a case (CS 81-017) in which the right to adequate notice and a fair hearing in disciplinary matters was the key issue. The Corrections Branch has now [illegible] which will benefit both inmates and staff. At the core of this issue is my concern that inmates learn to respect the rule of law in prison and that officers and staff model the respect inmates are to learn for the rule of law. The following case illustrates that the rule of law must be followed especially by a Director [illegible]

Locked up, and locked up again

An inmate in maximum security complained that he was locked up for an indefinite period without a disciplinary hearing and remained confined to his cell for eight days. The inmate was allowed to leave his cell during this time for one hour of exercise each day. He wrote first to the Division of Inspection and Standards. I asked for the results of that investigation.

On investigation, I determined that his confinement was contrary to the Correctional Centre Rules and Regulations which spell out the duties and responsibilities of both officers and inmates. I was concerned to find that this lockup had been imposed without a disciplinary charge or hearing and had continued solely on the instruction of the Director. I found the lockup to be contrary to law, as provided by the regulations made under the *Corrections Act*. The Director had quite arbitrarily ignored the requirements of the regulation.

As the Corrections Branch already considered a change in the regulations and the inmate had, by this time, been released, I made three recommendations:

(1) that an inmate should only be confined to a cell as a disciplinary measure, when authorized by a disciplinary panel; (2) that the district director review the use of lockup with the local directors; (3) that a letter be sent to my complainant, confirming the finding that the Director's imposition of lockup was contrary to Correctional Centre Rules and Regulations. The Corrections Branch implemented the recommendations. (CS 82-020)

Before inmates can be expected to live up to their responsibilities, they must know the rules. The next case points out that persons admitted to an institution are not always given the regulations with which they will be expected to comply. Where the rules are not available the actions of the officers may appear arbitrary.

You can't obey rules you don't know

An inmate at the Kamloops Regional Correctional Centre complained that he did not have access to a complete copy of the Correctional Centre Rules and Regulations.

The Rules and Regulations provide specific direction to both inmates and staff on the management, operation, discipline, security, and program of the prison. On admission to a centre, an inmate is entitled to receive a copy of the Rules. Adherence to the Regulations establishes the rule of law for prisons and builds respect for the law among staff and inmates. After investigation, I determined that the procedure in Kamloops was to post a set of Correctional Centre Rules and Regulations on the walls in the living areas for inmates. Certain sections, however, relating to the guards' responsibilities and duties had been deleted. In my view the posting of only some sections of the Rules and Regulations appeared to be an unreasonable procedure. It failed to provide the inmate with the information governing his conduct and his relationship with staff in some very important areas. Inmates may not value the Correctional Centre Rules and Regulations but the obligation to provide copies on admission still remains with the Director.

In response to my findings, the Corrections Branch ordered that the full text of Correctional Centre Rules and Regulations be made available to each inmate admitted to the centre, and provided 75 copies of the existing edition for that purpose. A revised edition is being prepared and will soon be available to all inmates and staff. (CS 82-021)

Inmate's rights ignored

A prison sentence means more than the loss of general freedoms. Often apparently insignificant incidents will trigger a nasty exchange between guard and inmate. An inmate complained to me that he was threatened by a guard who insisted that the inmate should go and get some paper towels for use on the tier. Both the guard and the inmate knew that paper towels were not allowed. In the shouting match that followed, tempers boiled over. The inmate requested to see a Justice of the Peace. His request and a report of the incident by the guard were sent to the R.C.M.P. who decided not to investigate. No interviews were conducted with the inmate. No reasons were given to the inmate why his request had not been granted.

After investigation, I concluded that this procedure was unjust. While the referral to the R.C.M.P. indicated that criminal charges might have been involved, only the inmate's request reached them. His information did not.

The Corrections Branch accepted my recommendation. If there is potential for criminal charges to be laid against a staff member or an inmate, the Director of Inspection and Standards will ensure that the complainant has access to the appropriate R.C.M.P., local police force, or a Justice of the Peace. This provides to all concerned that an Information can be laid and due process considered. (CS 82-022)

More time than expected

I investigated a complaint that one day before his scheduled release, an inmate was informed he had an additional sentence to serve. He requested clarification, but did not get a satisfactory answer. He tried to pay a $300 fine at the institutional Records Office but could not do so. My investigation revealed that the Warrant of Committal on the additional sentence was received by the institution more than three months before the inmate was informed of this change in his release date. The Warrant of Committal, prepared by the court, was incomplete. It showed a sentence of seven days to be served but failed to note that, in addition, a $300 fine was to be paid.

Inmates should be advised immediately in writing of any changes which affect the total sentence. I could not fault the Corrections Branch for failing to clear up the confusion of the sentence of seven days plus a fine of $300. This fine would have to be paid into the court.

Recognizing the need, the Corrections Branch introduced procedural changes on notification of sentences to inmates. The new procedure will ensure that inmates are advised of their sentence calculations. This procedure will now be included in the Manual of Operations. (CS 82-023)

Never saw again

A young inmate at a Corrections forestry camp complained that his new chain saw, a personal possession, had not been sent to him from the forestry camp on Vancouver Island, where he had been serving part of his sentence. He had tried to locate the saw but had only received conflicting stories of what had become of it. I found out that he had abandoned the saw when he went absent without leave from the camp run by the Forestry Service.

The Inspection and Standards Division of the Corrections Branch had already attempted to trace the saw, but the trails followed had led nowhere. A chance comment by one witness sent my investigator off on a fresh trail which led eventually to the bus depot in Chilliwack. Here the trail petered out for want of a waybill number. In the end, my office had no more luck in this case than Inspection and Standards.

But as a result of the investigation, Inspection and Standards introduced a number of changes regarding inmates' belongings in forestry camps, and the transfer of those belongings, to reduce the chance of losing them in transit. (CS 82-024)

[illegible] in the following cases, other factors [illegible]

Actions speak louder than words

An inmate complained that when his classification plan was drawn up in July, 1982, he was not interviewed and that he was transferred where he did not want to go.

I did not substantiate the inmate's complaint. Only one classification officer was assigned to the institution. His decision was based on extensive file reports of a recent incarceration. Public attention was focused on the inmate's jail sentence, and a history of escapes and violent incidents stood out. Before the officer made his decision, he was the focus of abuse from the inmate. I concluded that an exception to the principle was appropriate and a face-to-face interview would not have improved the process.

The Corrections Branch standard in effect since August 1, 1982, requires that every sentenced inmate must be interviewed in person before a decision is made. I pointed out to the Director of Provincial Classification that an alternative officer will be needed when a serious problem arises between the inmate and the classification officer. Although considerable time had passed and the inmate was already established in the Lower Mainland Correctional Centre, he was personally interviewed by a classification officer and the provincial director of classification. I considered this complaint resolved. (CS 82-025)

Some complaints arise from a lack of respect for a person's dignity. These complaints, because of their personal nature, require an urgent solution.

Humiliating experience

Three native Indian women, involved in a federal-provincial project, conducted interviews with native Indian prison inmates, all of them men. At the end of the interview and while the inmates were still present, a male guard announced that he would have to frisk the women. After the inmates departed, he conducted the frisk, ignoring the women's objections. The guard subsequently learned that he had misinterpreted a communication from his superior and that his actions were quite inappropriate.

The correctional centre and branch took steps to remedy the matter internally and apologized to the women. One of the women was not satisfied with these actions and brought her concern to me. She was worried about the impression the incident had left with the inmates. At my suggestion, the woman received a fuller explanation of the incident and the Corrections Branch informed each inmate who had witnessed this incident that the frisk was done in error and was contrary to Corrections Branch regulations, and that the Branch had apologized to the women.

These steps did not erase my complainant's feelings of humilation but Corrections had at least taken steps to atone for the error. (CS 82-026)

Doctor called before breakfast

I received an emergency call from an inmate in a secure institution. While awaiting trial, he had taken poison and was sent to the Vancouver Island Regional Correctional Centre for medical care. When he called, he was scheduled to return to court the next morning but he said he was suffering from diarrhea, abdominal pains, back pains from slipping in the institution, and inflammation. Since there is no doctor in the prison on a daily basis, he could not get any treatment for his ailments. My assistant spoke with the Director of the institution and arranged for a doctor to see the inmate before 8 o'clock the next morning. A thorough examination did not support a complaint of acute distress, although some pain spasms were present which had not been evident during the previous examination. The inmate was instructed to resume taking medication previously prescribed by the doctor to treat the inflammation. (CS 82-027)

Bail cuts correspondence

An inmate complained that when his common-law wife was granted bail, he believed correspondence between them was cut off and no contact was allowed by the provisions of the bail conditions. The inmate was concerned about the safety of his common-law wife, who had moved with her child to the Interior from the Lower Mainland. While they were both incarcerated, they had correspondence and visiting privileges.

I contacted the Bail Supervisor who agreed that correspondence would not be considered a breach of the bail bond conditions. He agreed to receive, read, and pass on any correspondence between the two. (CS 82-028)

ADVOCACY FOR YOUTH

In 1982, I made a commitment to have my staff visit the Victoria Youth Detention Centre (VYDC) once a month. [illegible]

pact on the lives of some children. I think I must take the initiative to reach out to children affected by official action.

Small but significant changes

During visits to the Victoria Youth Detention Centre several complaints, ranging from "too few smokes a day" to "too much physical force" used in discipline, have come to my attention. The Director's understanding and positive response has helped bring about changes. Although these changes on their own appear insignificant, I think they have helped the children at the Centre to function better within the constraints of the institution. For example, the rules regarding the conduct and discipline of residents have been posted in a Commons Room, so that each resident can refer to them whenever necessary. There is now a clear and simple appeal procedure for residents' grievances. A new accounting procedure has helped keep residents' accounts up to date on a weekly basis. This new accounting procedure seems to be particularly significant to the resident smokers who never seem to have enough smokes or enough money in their account to support their bad habit. As one resident told me, "I didn't smoke before I came in here and I probably won't smoke when I'm out, but while I'm here it's important." (CS 82-029)

Right to religious ceremonies

Native Indians at the Lower Mainland Regional Correctional Centre asked to conduct and participate in their own religious service. Corrections accommodated the request. I assisted in the resolution of the question of how accessible the service would be to other inmates. (CS 82-030)

An area in which I anticipated greater progress this year was in meeting the needs of inmates who require protection from other inmates. The Corrections Branch response to this complex issue is still to come.

A recommendation with bite

A number of complaints from inmates prompted a relatively broad inquiry into the standards of dental services available in provincial jails. What I found was a real patchwork quilt of policies and practices across the province, with the level of service given inmates at one institution differing sometimes drastically from that given at another institution in a different region. Existing practice provided for emergency care to relieve pain. Some institutions interpreted this to mean: if an inmate complains that his tooth is causing him trouble—pull it! Other institutions made available a range of up-to-date services. Corrections Branch policy directives were largely silent on the topic of prisoner dental care.

In some jails an inmate requesting to see a dentist was granted an appointment as soon as reasonably possible, while in other institutions, such a request was first screened by a nurse or medical doctor. Clearly, this hurdle would not be placed in the way of citizens in the community who sought the services of a dentist. I had to ask what authority or special competency the institution's nurse or doctor possessed that would permit him or her to decide who should see the dentist and who should not.

Following my recommendations, the Corrections Branch made a commitment which will lead to an upgrading and standardization of the level of dental services available in provincial jails, and ensure direct access to those dental services.

The Corrections Branch intends to phase in this policy during the next 18 months. The commitment made by the Corrections Branch should bring B.C. standards into conformity with the standards held by the United Nations, and those proposed by the Canadian Association for the Prevention of Crime for the provinces of Canada. (CS 82-031)

PUBLIC TRUSTEE

Most of the complaints against the Public Trustee allege unreasonable delay. They are often resolved by the Public Trustee taking the action requested.

Plain language please

A complainant's aged father was being cared for in a nursing home. His seven children were providing for their father's needs adequately but they did not realize that they had no legal authority to manage his affairs. The Public Trustee wrote to the children, urging them to apply for committeeship of the father's estate. The Public Trustee stated in his letter that if no action was taken by the family members before a set date, he would apply for committeeship.

Unfortunately, the children did not get the letter until a few days before the Trustee's deadline. Because they were not familiar with Court processes, a number of the children became alarmed that something might happen on that date which would irrevocably divest them of any role in the management of their father's affairs. They considered this an unwarranted intrusion into their relationship with their father. One of the children then complained to me.

I found that the Public Trustee's letter emphasized the need for urgency at the expense of sensitivity and had caused unnecessary alarm among the family members. I recommended that the Public Trustee devise a notification letter for next of kin which is more appropriately worded. The Public Trustee implemented this recommendation. (CS 82-032)

MINISTRY OF CONSUMER AND CORPORATE AFFAIRS

Declined, withdrawn, discontinued	239
Resolved: corrected during investigation	72
Substantiated: corrected after recommendation	3
Substantiated but not rectified	0
Not substantiated	32
Total number of cases closed	346
Number of cases open December 31, 1982	42

THE RENTALSMAN

Of the 346 complaints about the Ministry, 240 were directed against the Rentalsman. After an initial discussion with my staff, a further 109 complaints required some investigation involving contact with the Rentalsman staff and inspection of his files but after a discussion of my preliminary findings with these complainants, investigation was not necessary.

Some 65 percent of the complaints against the Rentalsman came from tenants and 35 percent from landlords. In 1982, the number of complaints about the Rentalsman rose by some 25 percent, compared to 1981.

CO-OPERATION

Complaints against the Rentalsman often require immediate attention and it is important that the Rentalsman respond quickly to our requests for information and assistance. The Rentalsman has continued to extend the fullest co-operation to my staff and usually gives prompt attention to complaints which are well founded.

WAITING—THE NEED FOR A REMINDER

Almost one quarter of the complaints I received against the Rentalsman claimed unreasonable delay, failure of Rentalsman Officers to make decisions, send letters or return phone calls when promised, or within a reasonable period of time, and failing to advise parties when promises could not be kept.

When I brought this type of problem to the Rentalsman's attention in 1981, the actions taken by him at the time were insufficient, judging from the complaints I continued to receive in 1982. I found it necessary, therefore, to urge the Rentalsman to remind his staff that these practices are not consistent with the minimum standards of courtesy and fairness expected of public officials. The Rentalsman acknowledged the validity of my criticism and wrote a Procedural Guideline and Memorandum for distribution to his staff.

Unclear communication

A resident in a mobile home park complained that she had not heard from the Rentalsman Officer for more than a month and had not received additional repair applications as promised. Many residents of the park were apparently without an adequate water supply. When contacted by my staff, the Rentalsman Officer took immediate action to correct the omission and apologized to the complainant for the delay and for not keeping her informed of progress in the matter. (CS 82-033)

Neglect

A tenant complained that a Rentalsman Officer had failed to keep his promise to send her a letter, confirming his approval of her rent increase proposal instead of the landlord's proposal. She claimed that she contacted the Rentalsman Officer several times over a period of months with a request that he send her his written decision. Apparently, each time a promise was made but not kept.

After some prompting by my investigator, the Rentalsman Officer finally wrote a letter of confirmation. In my closing remarks to the Rentalsman I made note of the officer's failure to apologize for the delay, a gesture which would have been fitting under the circumstances. Notwithstanding the high caseloads that some Rentalsman Officers have had to carry, a delay of six months for the kind of request the complainant had made, was quite unreasonable. (CS 82-034)

Unrealistic expectations

The landlord of a mobile home park complained that more than a month had passed since the Rentalsman Officer had adjourned the hearing concerning his rent increase application and he was concerned that he had not had any further response. At the time of the adjournment, the Rentalsman Officer led the complainant to believe that within a few days he would send copies of all submissions received to all parties and set a deadline for the receipt of further submissions.

My investigation showed that the Rentalsman Officer may not have realistically considered the clerical time and effort that would be involved in copying and distributing the unusually large volume of submissions which were received from the landlord and tenants. The complainant accepted this explanation, but it is clear that his complaint would not have been necessary, had the Rentalsman Officer taken the initiative to inform both the landlord and the tenants of the change in timing. (CS 82-035)

REFERRAL TO JUDICIAL REVIEW

Some complainants claim that the Rentalsman erred in law or did not act in accordance with the principles of natural justice or procedural fairness. In such cases, the landlord or tenant may have his or her concerns reviewed by a Judge of the Supreme Court or a County Court, and I do not investigate those aspects of complaints that are best handled by the courts. Where there are good grounds for a judicial review, my staff will refer a complainant to a lawyer or a para-legal advocate and may offer some assistance in identifying the points which could be made in approaching the court. The following two examples illustrate the kind of referral assistance offered.

Irrelevant considerations

In deciding not to approve the full amount of a landlord's proposed rent increase, a Rentalsman Officer gave "the size of the proposed increase which would remove units from rent control" as one of her written reasons. I advised the complainant that it may be possible to persuade the court that the Rentalsman Officer erred in law by basing her decision on an irrelevant consideration. I suggested he consult a lawyer and take the matter to judicial review. (CS 82-036)

Unreasonable covenant

In another case, a tenant who occupied a suite in her landlord's house felt it was unfair of her landlord to require that she pay the Hydro account for the entire house. The Rentalsman Officer did not find that the covenant was unreasonable and ruled in favour of the landlord. My investigator secured legal assistance for the tenant who was then successful in convincing the court that the covenant was, indeed, unreasonable and, therefore, unenforceable. (CS 82-037)

MISSED OPPORTUNITIES

In the following two cases, Rentalsman Officers may have missed opportunities to combine mediation with adjudication to produce more equitable results.

Get out fast

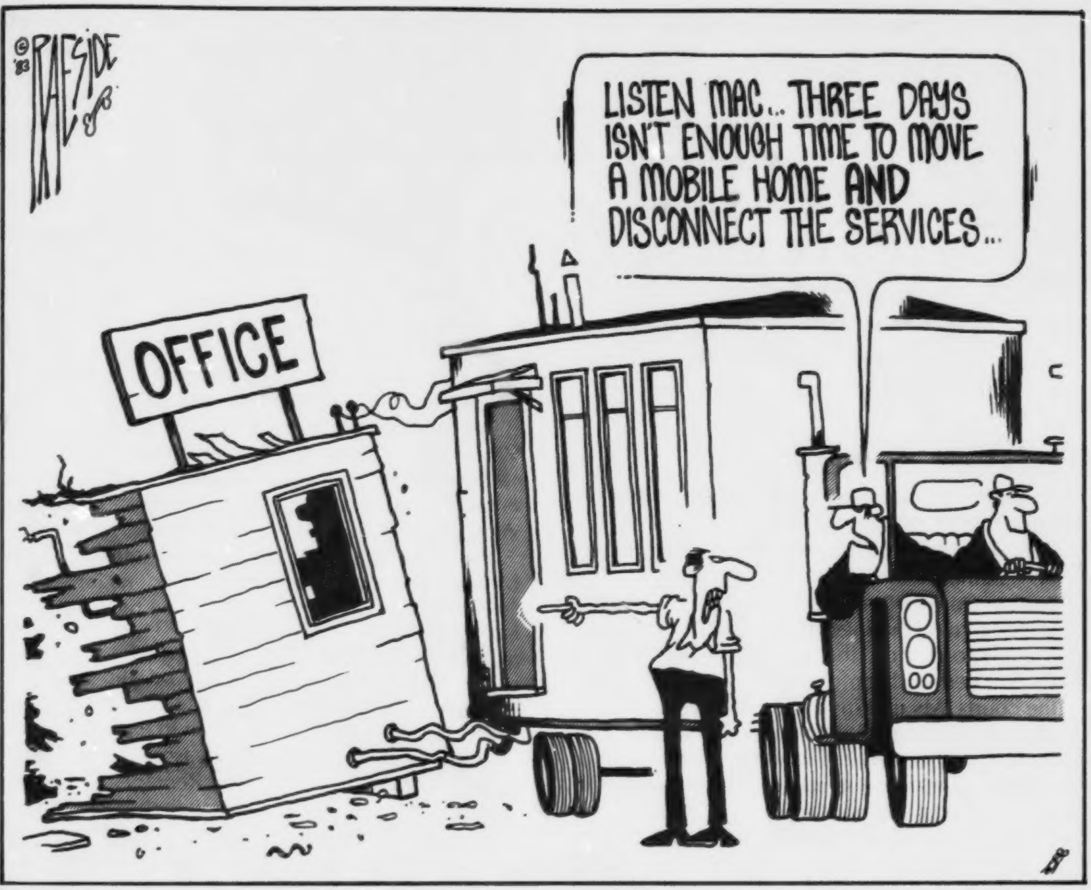
A rather disturbed tenant called my office immediately after a Rentalsman Officer had given her landlord the right to take possession of her apartment in 48 hours. The complainant claimed that it would be an extreme hardship on her and that it might even be impossible for her to move all her belongings on such short notice. She also felt the Rentalsman Officer had been unfair in giving her such little time when the landlord himself had offered to give her two weeks to move.

Considering the circumstances and the complainant's own description of her conduct at the hearing, I was unable to identify any grounds for judicial review and could understand the basis for the Rentalsman Officer's ruling. Nevertheless, on the strength of the complainant's apparent need and the landlord's previously conciliatory attitude, my investigator contacted the landlord who readily agreed to give the complainant the additional two days she needed to complete the move in an orderly fashion. (CS 82-038)

Three days to move

A tenant in a mobile home park was given three days notice by the landlord to find another park and move her mobile home. She considered that impossible. Judging from the complainant's description of the circumstances—repeated failure to pay rent—it was clear that a judicial review, which would stay the order of the Rentalsman and buy more time for the tenant, would not be the most equitable solution, given the interests and entitlements of the landlord.

The landlord told my investigator that he was not willing to give the tenant more time to move but after considering the tenant's moving problems, he offered to rent her a parking spot on his property, which was not equipped for residential purposes, for $15 per month until she could find a pad in another park, on the condition that she take immediate steps to vacate the pad and relocate in an apartment. The complainant was quite happy with this solution and the landlord's interests were not compromised. In fact, the landlord probably saved money by not having to pay for the removal of the tenant's home which probably would have been necessary in this case. (CS 82-039)


© '83 RAESIDE
LISTEN MAC... THREE DAYS ISN'T ENOUGH TIME TO MOVE A MOBILE HOME AND DISCONNECT THE SERVICES...
OFFICE

Ideally, the Rentalsman Officers should have mediated these particular matters themselves but since they did not see room for mediation in the first instance, it is unlikely that I would have been able to change the Rentalsman's mind quickly enough to be of any value to these complainants.

LACKING UNDERSTANDING

In at least 16 percent of the complaints considered, complainants clearly lacked a good understanding of the powers of the Rentalsman, the rights and duties of landlords and tenants, and why their case was handled in a particular way.

It is my impression that many of these complainants would not have had to turn to me for help, had the Rentalsman's staff taken the time to ensure that their questions and concerns were properly addressed. Some people complained because they were simply unfamiliar with the role of the Rentalsman and found the process too bewildering and complex to know what questions to ask or how to pursue their [illegible] vigorously in the realm of words and arguments. Misunderstandings may not always be the Rentalsman's fault but there have been enough instances of incorrect information and advice given by the Rentalsman's staff to cause me some concern. Among those not satisfied with the adequacy of information received from the Rentalsman's office were several people who complained that different Rentalsman staff had given conflicting information:

The right hand doesn't know . . .

A landlord who wanted to apply for a special rent increase was told by one Rentalsman Officer that no special form existed and that he could apply by ordinary letter. He was quite upset when he received a letter sometime later from the Rentalsman's office stating that applications had to be made on the proper form. The landlord was particularly irritated about the delay which resulted from this misinformation. When I brought this matter to the Rentalsman's attention, he sent a memorandum to the Supervisor of the office concerned, asking him to make sure that all staff were aware that there was, indeed, a proper application form for this type of rent increase. (CS 82-040)

Conflicting information

A tenant had vacated his premises because his landlord had written him a letter saying he intended to occupy the premises himself. When the landlord failed to move in and instead rented the premises to another tenant, the complainant contacted a Rentalsman Officer who advised him to apply for moving expenses under section 19 of the *Residential Tenancy Act*. His application, however, was rejected by another Rentalsman Officer who said that he was not eligible for moving expenses because the landlord's termination letter was not on the proper form. It was apparent to me that the second Rentalsman Officer had given the wrong advice. A senior member of the Rentalsman's staff acknowledged the error and offered to reopen the complainant's file. (CS 82-041)

More conflicting information

A tenant who had received an ex parte order (i.e. the landlord did not attend the hearing) from the Rentalsman for the return of her security deposit complained that she received conflicting information from two members of the Rentalsman's staff regarding the specific requirements for serving the order on the landlord. She wanted to proceed with enforcement action through the courts. My investigation confirmed the complainant's claim that the Rentalsman Officer making the order had advised her that the order could be served on anyone at the registered office of the landlord (a company), whereas the staff member who received her subsequent request for a certificate for court purposes advised that she had to provide the name of the specific person served at the landlord's office. A senior member of the Rentalsman's office acknowledged that the latter advice given by a staff member under his supervision was incorrect and consequently gave his undertaking to review his written instructions to his staff to ensure that they are accurate and sufficiently comprehensive to cover circumstances such as those of the complainant. (CS 82-042)

HOW MUCH SERVICE IS ENOUGH?

The following complaint arose when Rentalsman Officers failed to deal adequately with the complainants' requests for assistance.

Reluctance to assist

A tenant whose landlord was preventing her from selling her mobile home from the mobile home park complained that the Rentalsman Officer did not respond to her requests for help to clarify the situation. The tenant's problem was complicated by the fact that the landlord was granted an order of possession by the Rentalsman three month's earlier, concerning a dispute over failure to pay rent. The landlord, however, did not follow through with the execution of this order and instead held it out as a threat, while continuing to accept rent from the tenant for each of the three months which had passed since the date of the order.

As a result of my investigator's first attempt to bring the complainant's needs to the attention of the Rentalsman, the Rentalsman Officer concerned called the tenant, advised her that he regarded her tenancy as being restored because of the landlord's acceptance of rent following the order of possession. He also informed her that the landlord would be in violation of the *Residential Tenancy Act* if he unreasonably withheld permission for her to sell her mobile home and assign her tenancy to the new owner. The Rentalsman Officer apparently advised the complainant that if the landlord prevented her from attempting such a sale, she should obtain reasons for his refusal and could dispute those reasons before the Rentalsman.

The tenant then relisted her home for sale, but when her realtor visited the manager he apparently said that no sale would be allowed. The tenant immediately called the Rentalsman Officer and asked him to explain to the realtor that the landlord could not unreasonably withhold permission to sell, but the Rentalsman Officer apparently refused to speak with the realtor. This brought the complainant back to my office with a complaint that the Rentalsman Officer was still not being sufficiently helpful. At this point, it became quite clear to my investigator that the Rentalsman Officer needed to be specifically instructed to contact both the landlord and the realtor directly if further conflict were to be avoided. A senior official of the Rentalsman's office readily agreed and under his direction, the Rentalsman Officer made the necessary contacts which quickly resolved the matter to the complainant's satisfaction. (CS 82-043)

In my opinion, Rentalsman Officers presented with such requests for service are in a good position to anticipate the types of problems which might arise from the public's lack of information about entitlements and obligations under the *Residential Tenancy Act*. I believe they have a duty to anticipate problems and de-escalate conflict wherever possible.

UNFAIR RETROACTIVE RENT INCREASES

In 1981, the Rentalsman accepted my recommendation and issued a policy guideline to his staff to ensure that tenants would be advised of rent increase decisions at least one month in advance of the date the increase was to be effective. The

Rentalsman agreed with me that tenants should not have to bear the cost of delays caused by his office's backlog of applications and that tenants subject to large increases should be able to give a proper one month's notice to vacate if they felt the approved increase was more than they could handle. During 1982, I continued to receive some complaints of unfair retroactive rent increases of which the following is an example:

No opportunity to be heard

The tenants of an apartment building in the Lower Mainland complained that the Rentalsman's approval of the landlord's rent increase application to be effective three months retroactive, posed an undue hardship on them. In his letter, the Rentalsman Officer stated that he based his decision on the interests of all the parties, but in discussing the matter with my investigator, he could not specify what factors he had taken into consideration and acknowledged that he did not give the parties an opportunity to make representations on retroactivity. The Rentalsman Officer was also unable to explain why the Rentalsman's guidelines on the timing of this type of increase were not followed when the circumstances appeared to warrant their application. On the basis of the concerns raised by my investigator, the Rentalsman Officer agreed to hold a hearing to consider this aspect more thoroughly and he subsequently varied the timing of his order to meet the objections of the tenants. (CS 82-044)

The principle I would like to underline here is that a Rentalsman Officer ought to consider submissions from all parties, concerning not just the substance of a decision, but also the timing of its impact.

CORPORATE AFFAIRS

I have always received the good co-operation of the Superintendent of Brokers, Insurance, and Real Estate, and I have not substantiated a complaint against him in the past two years.

The Superintendent of Credit Unions, Co-operatives and Trust Companies receives many complaints from dissatisfied co-op members. His limited powers do not permit him to do much about these complaints. The current Co-operative Associations Act does not provide adequate remedies for housing co-op members. New legislation is probably required.

I have also received good co-operation from the Registrar General and his staff. Complaints are usually about an office procedure that is perceived as being unreasonable.

What did you do 16 years ago?

A sports club complained about the Registrar of Companies. The club, in the past registered under the *Societies Act*, was expected to file a report every year with the Registrar of Companies. For the past sixteen years, however, it had not done so because the club's executive had not been aware of this requirement. The current executive wanted to restore the club's good standing and was told by the Registrar's office that this was only possible if all missing reports were submitted. That was impossible, because no records were available.

My investigator explained the situation to the Registrar of Companies. The Assistant Deputy Minister of Corporate Affairs then informed me that it would be acceptable if the club submitted a statutory declaration to the effect that the information necessary for the completion of the missing reports was not available. Annual reports would then only be required for those years for which information existed, including the current year. This solution was satisfactory to the club. (CS 82-045)

Broker's deposit dropped

A stockbroker occasionally uses the search services provided by the Registrar of Companies. So far, he conducted his search over the telephone and was then billed the search fee of $2. Recently, he was told that policy had changed, and that he was required to pay $2 in advance of every search, or to open an account with the Registrar's office and make a deposit of $100. The complainant felt it was impractical to pay $2 ahead of time and then wait for the information to come in the mail; he also did not wish to deposit $100 because he does not use the service that often.

The Branch explained that the old system had created difficulties. It had become increasingly difficult to collect outstanding fees, and many bills remained unpaid. At the same time, this type of billing process was very costly. Therefore, the new system was introduced.

Branch officials said they were quite willing to accommodate those whose needs were not met by the new system.

I recommended to the complainant that he get in touch with the Branch and discuss the matter. He did, and the Branch opened an account for him with a deposit of $10. (CS 82-046)

System unreliable

A man complained that the Central Registry, part of the Office of the Registrar General, had given him wrong information. The complainant had purchased a vehicle but before doing so, he asked the Central Registry to conduct a search. When Central Registry informed him that there were no liens against the vehicle, he went ahead with the purchase. About a year later, the car was seized because, contrary to the information received, a lien had been registered against it. The complainant said he was out quite a bit of money.

After the initial phone call, I did not hear from the complainant again, although my staff tried to reach him. I assume that he retained a lawyer to deal with the matter.

The issue seemed of sufficient importance, however, to warrant an investigation on my own initiative.

I found that the Central Registry provides registration and search services under five statutes. When mail containing filings under these statutes arrives, it is opened, stamped, processed, microfilmed, and batched for data entry. This takes about two days. Keypunch services are then performed externally, and this takes another two days. Then, a tape is sent to yet another place for entry into the system; the tape is run at night, and the information appears on the Central Registry's computer the next day.

In summary, if the process runs smoothly, it requires five days but it does not always run smoothly and is subject to frequent equipment breakdown and to staff shortages.

Consequently, when an individual conducts a search, the information he gets is at least five days, usually more, out of date and, therefore, not reliable. Because of the nature of the process, the delay will always be there, and there is no possibility of guaranteeing accurate, up-to-date information at any time.

To make the public aware of this shortcoming, the Central Registry decided to indicate on all search reports the effective day of the search. In other words, the Central Registry draws the system's flaws and delays to the attention of the public. But I don't think this is good enough.

The Central Registry advised me that new legislation, now under consideration, would deal with the problem. While this is a step in the right direction, one has to realize that draft legislation travels a long way until it is actually introduced in the Legislative Assembly in the form of a Bill. Therefore, interim steps appear necessary.

After my initial investigation, I reported my preliminary findings to the Ministry; I also advised the Ministry that, depending on its response, I planned to recommend that the Registrar General and the Deputy Minister seriously consider the possibility of converting its existing system to an on-line system, or alternatively, that the Central Registry strengthen the wording on all search reports to clarify that the results of a search will never be up to date and conclusive.

The Ministry agreed with my first recommendation and informed me that it is proceeding with its implementation; until the present system is replaced by an on-line system, the Ministry plans to strengthen the warning about possible inaccuracies where necessary.

As the Ministry accepted my tentative recommendation, further formal steps were not necessary. (CS 82-047)

LIQUOR CONTROL AND LICENSING BRANCH

The Branch has been very co-operative in making information and documents available to my staff. The number of complaints I received was relatively small.

Bottoms up

A cabaret owner complained about the Liquor Control and Licensing Branch. She wanted to serve draft beer but was refused by the Branch. Just down the street from my complainant's establishment was a large pub that did serve draft beer, and in our hard economic times, beer drinkers opted for the cheaper draft rather than the more expensive bottled beer. My complainant said she was on the verge of bankruptcy, and the only thing that might save her was permission to sell draft beer.

I found out that the Liquor Control and Licensing Branch policy did not allow cabarets to sell draft, unless they had done so prior to 1981. My investigator discussed the matter with the General Manager of the Branch who promised to review my complainant's situation. A few weeks later, the General Manager advised my office that he had re-examined Branch policy and that, effective immediately, cabarets are allowed to serve draft beer. (CS 82-048)

Fifteen seats short

The owner of a small restaurant complained that the Liquor Control and Licensing Branch was unwilling to issue a liquor licence, because of the limited number of seats in his restaurant.

I examined the provisions of existing Regulations passed pursuant to the *Liquor Control and Licensing Act* and found that the Branch had correctly applied its legislation. The complainant's restaurant has only 25 seats; under the Regulations, a liquor licence can only be issued to restaurants with at least 40 seats.

Although the complaint was not substantiated, I wrote to the Minister of Consumer and Corporate Affairs, suggesting that, perhaps, exceptions to the 40-seat requirement should be considered. The Minister informed me that the Regulations under the *Liquor Control and Licensing Act* are under constant review, and that he asked the General Manager of the Branch to ensure that this particular matter was given a full assessment and consideration for possible amendment.

I was later informed by the General Manager of the Branch that he sought input on the matter from the Restaurant and Food Services Association of British Columbia. When assured that a review and reconsideration were taking place, I did not pursue the matter further. (CS 82-049)

CONSUMER AFFAIRS

Many of the complainants who came to me found that the services provided by Consumer Affairs were inadequate. Usually, when an individual brings a complaint to Consumer Affairs, the Ministry tries to mediate between the consumer and the supplier. If mediation is not successful, the Ministry informs the consumer. It may well be that this is all the Ministry can do in the majority of cases, but perhaps the Ministry is raising expectations too high.

On some occasions, it is the consumer who expects too much of the Ministry.

Ministry not to blame

A woman complained about poor service she had received from Consumer Affairs. She had moved from Toronto to Victoria and complained to the Ministry about the company which had moved her possessions across the country. She had found out that the moving company had sold all her personal effects at a public auction. She said that the moving company had not notified her that it wished to dispose of her goods.

It turned out that the complainant had left Toronto about two years before the moving company disposed of her goods. The moving company apparently had been waiting to hear from her, while she was waiting to hear from the company. The Ministry tried to trace the names and addresses of individuals who bought some of her belongings when they were auctioned off. The Ministry also suggested to the complainant that, should she wish to take further steps, she consider going to court.

I informed the complainant that I could not fault the Ministry for any of its actions. The *Warehouse Lien Act*, the statute under which her goods were auctioned off, is not a statute that permits a government agency to do anything. It simply is a law that sets out certain requirements, and if those requirements are not met, recourse is available through the courts. (CS 82-050)

MINISTRY OF EDUCATION

Declined, withdrawn, discontinued	**14**
Resolved: corrected during investigation	**8**
Substantiated: corrected after recommendation	**0**
Substantiated but not rectified	**1**
Not substantiated	**2**
Total number of cases closed	**25**
Number of cases open December 31, 1982	**10**

The Ministry of Education's responsibilities touch on all aspects of education in the province. Local school boards, however, set policy for their specific school districts.

I do not have the authority under the Ombudsman Act to investigate public schools and school boards but Ministry officials have helped resolve non-jurisdictional problems informally when I refer them to the Ministry.

Studies continued

A parent complained to my office that her son was mistreated by his elementary school teacher. The mother said her child had not been allowed out of the classroom for lunch break or recess. The child had been unhappy in school for several years. Even a change in school had not helped. At the time of the complaint, the mother had removed the child from school.

I asked Ministry officials to intervene with the school district and as a result the Ministry of Human Resources found a tutor for home instruction enabling the student to complete the school year. The Ministry of Education arranged a meeting with the parent, the social worker, and the School District Superintendent to work out a solution for the following school year. (CS 82-051)

I also receive complaints about the administration of public schools. While most of the administration is handled by the local school district, the Ministry is responsible for aspects requiring provincial standards.

Changed again

An elementary school secretary complained that the Ministry of Education requested yet another change in the students' report cards and the schools' permanent record forms. She said this was unreasonable because the Ministry had changed the cards only a year ago. Before that change, the permanent record forms had not been changed for eleven years.

I reviewed the forms and the proposed changes, which consisted mainly of fine-tuning the form. The Ministry agreed to allow schools to use either form. (CS 82-052)

The provincial student assistance program for post-secondary education continues to be a source of complaints. Generally these are resolved by providing additional information to the Ministry concerning the student.

I'm broke

A university student's mother complained that her son had not received his student loan. The student was attending university in Saskatchewan. He could not afford his tuition and living expenses without this loan.

The Ministry explained that it had not yet processed his application, because he was a B.C. student applying for both loan and grant to attend a university outside the province.

I spoke with the financial aid officer at the University. It was possible for the student to delay payment of his tuition, and he was eligible for an emergency loan to cover his rent and food. Ministry officials completed the necessary documents within a week. (CS 82-053)

Quick action

A student at a hairdressing school said she had not received her student loan from the Ministry of Education. On investigation, I found that the Ministry had sent the original documents to the wrong address. My complainant completed the statutory declaration stating that the original documents had been lost and I informed the Ministry to that effect. New documents were issued that afternoon. (CS 82-054)

I have the authority to investigate colleges and provincial institutes, provided the majority of the board of the institute is appointed by the Lieutenant Governor in Council or Ministry. I have begun to receive complaints from students in these various institutions.

Hey mom—I passed

A student at a community college became seriously ill and was unable to meet all normal requirements to complete his term successfully. In most courses he achieved a passing mark based on work completed but in one course he was given a mark which the college interpreted as a failing mark. The student disputed this interpretation. He also complained about the lack of support from his department head when he tried to run for president of the student body.

On investigation the college agreed that it had misinterpreted the student's mark and granted him a passing grade. He had already passed his second-term course in that subject but the college had withheld that information until the matter of the first-term failure was cleared up. The college agreed to take steps to ensure proper application of policies regarding assignment of appropriate grades.

On the second issue, I could not agree with the student. The department head had the right to tell the student he should not run for president of the student body if such extra-curricular activity jeopardized the student's academic standing. (CS 82-055)

MINISTRY OF ENERGY, MINES AND PETROLEUM RESOURCES

[illegible] discontinued	2
[illegible] during investigation	4
[illegible] after	
[illegible]	1
[illegible] not resolved	0
[illegible]	6
[illegible] number of cases closed	13
[illegible] as at December 31, 1982	8

Once again, this Ministry drew relatively few complaints and nearly all concerned claim-staking problems. There is one particular problem I wish to draw to the attention of the Legislative Assembly, since its solution involves a change in the legislation.

The basic problem is that while section 50 of the *Mineral Act* provides a mechanism for resolving disputes over mineral claims or leases, there is no corresponding mechanism under the *Mining*

[illegible]

The problem with mining claims

In July, 1979, my complainant staked a placer mining claim. Part of the area had been staked by another miner a month earlier, but according to my complainant and four witnesses, the earlier staking was incomplete and should have been disallowed by the Ministry. By the time the claims inspector visited the site later in the summer, the earlier staking appeared to be satisfactory, and the Ministry had issued a placer mining lease to the other miner. However, the complainant wanted an opportunity to contest the lease, and to present his evidence.

Had this been a claim or a lease under the *Mineral Act,* the complainant would have been able to contest the other miner's claim through the appeal mechanism under section 50 of that Act. Several years ago, according to Ministry officials, the *Mineral Act's* appeal procedure was used to deal with placer mining claims too. Then legal questions were raised about the validity of using the appeal procedure in one Act to deal with leases issued under another—the *Mining (Placer) Act* —and the practice was discontinued. The result is that there is no mechanism available at present for dealing with contested placer mining leases, except by taking these issues to court. For many miners, this is not a practical solution.

My complainant had been told repeatedly for three years by the Ministry that no action could be taken on his problem until the Act was amended to include an appeal mechanism:

> "Repeated attempts to amend the *Mining (Placer) Act* have failed. I regret to say again that we cannot address this problem until the Act is amended."

Since the passage of amendments to legislation is beyond the direct control of the Ministry's officials, I was unable to substantiate this complaint. However, being aware that many others found themselves in the same situation as my complainant, some of them having waited even longer than he had for the introduction of an appeal mechanism, I advised the Minister of this long-standing and unresolved problem.

The following is part of a letter I wrote to the Minister on 20 September, 1982:

> "However, I have noted that Mr. (   ) has been corresponding with your Ministry about this problem for three years, and I am aware that there are others with similar problems. They have been told that your Ministry has tried without success since 1980 to have an appropriate amendment to the *Mining (Placer) Act* introduced. I realize that the timing of the introduction of legislative amendments is not directly within the control of your officials, but the continuing lack of a suitable mechanism for resolving these disputes could be regarded as an injustice towards these persons, some of whom could lose much because of this prolonged wait. I must, therefore, consider reporting on this delay in my next Annual Report to the Legislative Assembly.
>
> "I urge you to look into this ongoing problem, and to consider the need for a legislative amendment in the near future. I am not aware of any other way this matter could be resolved, other than the complainant's going to court."

The Minister's response of 9 November, 1982, states:

> "You are quite correct that we have been advised that the appeal provision in s. 50 of the *Mineral Act* is not applicable to placer leases. While we do not agree that an injustice is being perpetrated when complainants have the undeniable right to have their complaints heard and adjudicated upon in a court of competent jurisdiction, we recognize that the situation is not ideal . . ."
>
> "While it is all too easy to pass remedial amendments to solve particular problems, the result is frequently convoluted patch-work legislation that simply creates more problems, that is not a credit to government, and does not serve the best interests of the public.
>
> "Our objective is to review our legislation, our operations, and the problem areas identified by yourself and others, with the aim of positioning our legislation and operations to properly and effectively accomplish this Ministry's mandate as steward of the mineral resources of the Province.

"I would be pleased to receive any recommendations you might have in this regard, be it specific points or general guides."

Although the comments in the second paragraph quoted above may well be generally true, I am not convinced that the result described would be likely to occur in this situation. By now, the complainant has waited four years for an appeal mechanism, and others have waited longer. Who knows when the Ministry's fine objective, as described above, will be realized? Will the introduction of a simple appeal mechanism now, or even a cross-reference to the corresponding mechanism in the *Mineral Act*, really prevent the universe from unfolding as it should? As an alternative rule for action, let me offer the following:

> "Change in the law can best be accomplished piecemeal when a significant abuse becomes apparent, or when disorder strikes, or when a lacuna in an existing section of a statute appears, or where unintended conflict arises between clauses that were meant to supplement each other but, upon closer examination, are shown to be at odds. If the people are to rule, then changes should be made only when there arises a clear and specific public demand for changes in the law. It is not the business of civil servants to manipulate the statutes to serve their own convenience . . ."

—"Man of Law: A Model" by Morris C. Shumiatcher (Prairie Books 1979), as quoted in the April 1982 "National" publication of the Canadian Bar Foundation. (CS 82-056)

MINISTRY OF ENVIRONMENT

Declined, withdrawn, discontinued	22
Resolved: corrected during investigation	32
Substantiated: corrected after recommendation	1
Substantiated but not rectified	0
Not substantiated	31
Total number of cases closed	86
Number of cases open December 31, 1982	68

Complaints about the Ministry of Environment ranged over the full scale of the Ministry's interaction with the public, with no single area being particularly outstanding. The following are some of the instances in which changes to the legislation, or regulations, or Ministry practices and procedures, have been made or are required.

WASTE DISPOSAL SITES

I received several complaints, from different parts of the province, that municipally-run waste disposal sites were being operated [illegible] contrary to the requirements of their permits, with little or no action being taken by the Ministry's [illegible]

In such instances, the Ministry [illegible]

the place, increasing the risk to public health; and the Ministry does not have the resources to follow every sewage truck around, to see where it dumps its cargo. That may well be the case. However, I cannot believe the Legislature intended any discretion provided by the law to be used in such a manner as to permit the law to be flouted indefinitely by municipal authorities in this fashion. A new approach at least, and possibly new legislation, are clearly needed in this area.

FISH AND WILDLIFE

I heard from a member of the armed forces who had just returned to his home province, B.C., following a tour of duty elsewhere. He had hunted here for most of his life, and was now most distressed to hear that under the new *Wildlife Act*, he was being treated as a non-resident.

Hunter? yessir! resident? no, sir

In late summer, a member of the armed forces was transferred back to B.C. after serving for four years in Alberta. He was originally from B.C., had always considered B. C. his home, and had hunted here for years prior to his transfer to Alberta. Looking forward to hunting again in the fall in some of his old haunts, he applied for the necessary special licences, and was astonished to find that he was apparently not eligible for resident licences. A non-resident licence for any species generally costs five to eight times the price of a resident licence. For moose, for instance, the costs are $120 and $20 respectively, under the new 1982 *Wildlife Act* and regulations. After appealing to the Director of the Fish and Wildlife Branch for reconsideration of this decision, he complained to me.

My complainant contended that each year, between 300 and 400 personnel of the armed forces were transferred into and out of the Province. A large proportion of these were hunters. A similar situation existed with the R.C.M.P., and in both organizations, he said, most transfers occurred in July and August. He felt that for those, like himself, who were originally from B.C., the Ministry should recognize that their absence was caused by their service to the country, and should allow them "resident" status as soon as they returned to the Province.

My investigation showed that the Ministry's interpretation of the law was correct. The *Wildlife Act* defines "resident" as:

". . . a person who makes his home in the Province and has been present in the Province for 6 months in the 12 months immediately before making an application under this Act . . ."

Further, various sections of the regulations require a hunter to possess a resident hunter number card, a resident hunting licence, or an appropriate species licence (resident or non-resident). There seemed to be no provisions for the kind of exception that my complainant was seeking. Therefore, I was unable to substantiate the complaint. However, the Director of Fish and Wildlife Branch saw merit in his arguments, and promised to recommend changes in the regulations that would achieve the desired exemptions. The complainant realized that such changes would probably occur too late to benefit him, but was pleased to have been instrumental in potentially obtaining this benefit for future armed forces personnel. (CS 82-057)

Indians who wished to hunt in limited entry hunting (LEH) areas [illegible] investigation of a complaint, I [illegible] try's practice of requiring Indians to apply for and possess LEH licences was contrary to law. The Ministry then [illegible]

Traditional hunting rights denied

The Environment Ministry's Fish and Wildlife Branch instituted a Limited Entry Hunting (LEH) Program in 1974, in an effort to conserve B.C.'s wildlife population. The overall purpose of the program is to protect the wildlife population in certain areas through monitoring and controlling the rate of harvest. Operationally, this program requires hunters to apply for LEH licences on an annual basis. Applications are entered in a lottery, and licences are issued on the basis of the draw. Since 1978, based on the assumption that overharvesting would arise if Indians were not subject to the licensing requirements of the LEH program, Indians were requested to apply for and possess LEH licences.

An Indian Band complained to me about the LEH program in August, 1981. They felt the program was discriminatory because it denied Indians their traditional hunting rights. They had to compete with all other hunters of B.C. for hunting opportunities in their immediate environment which also was their traditional hunting area. In addition, they had to travel from their residences in remote areas to a city 80 miles away to get the application forms. I reviewed the legislation and found that section 2 of the *Wildlife Act* exempts Indians from the requirement to hold any licence issued under this Act. I informed the Band of this exemption and learned that the complainants were under the impression that they were required by law to possess an LEH licence in order to hunt. There were three sources of this belief: 1) the instructional manuals which accompany the applications for LEH licences state that "Indians . . . require the LEH licence"; 2) at the time of application, Indians are not informed that they are exempt from licensing requirements under the *Wildlife Act;* and 3) the liaison Fish and Wildlife Manager to the band stressed the importance of participation in the LEH program, again, without explaining that Indian participation was voluntary. It appeared then that the Ministry's practice of requiring Indians to apply for and possess LEH licences did not reflect the intent of the legislation, and was contrary to law.

I notified the Ministry of my findings, and recommended first that the Ministry cease its practice of requiring Indians to apply for and possess LEH licences in order to hunt, and secondly that the Ministry take appropriate steps to inform Indians of the altered practice. The Ministry of Environment agreed to my proposed recommendations and the complaint was thus rectified.

As a postscript, perhaps I should add that the exemption did not last long. A new *Wildlife Act* was proclaimed in August, 1982. Section 12 of this Act retains the exemption for resident Indians from holding a licence issued under the Act. Section 17 provides for regulations covering the issuing of limited entry hunting authorizations. (While the authorization itself is free, the application for the authorization costs $3.00.)

By changing the name of the document in the Act from "licence" to "authorization", and by not charging for it, the Ministry appears to have eliminated the exemption! It seems that Indians must now purchase applications for these authorizations, and have their applications entered in a lottery, on the same basis as non-Indians. Does the present situation reflect the intent of the Legislative Assembly, or does it merely represent a "clever" manoeuvre by Environment officials to circumvent the generality of the section 12 exemption? (CS 82-058)

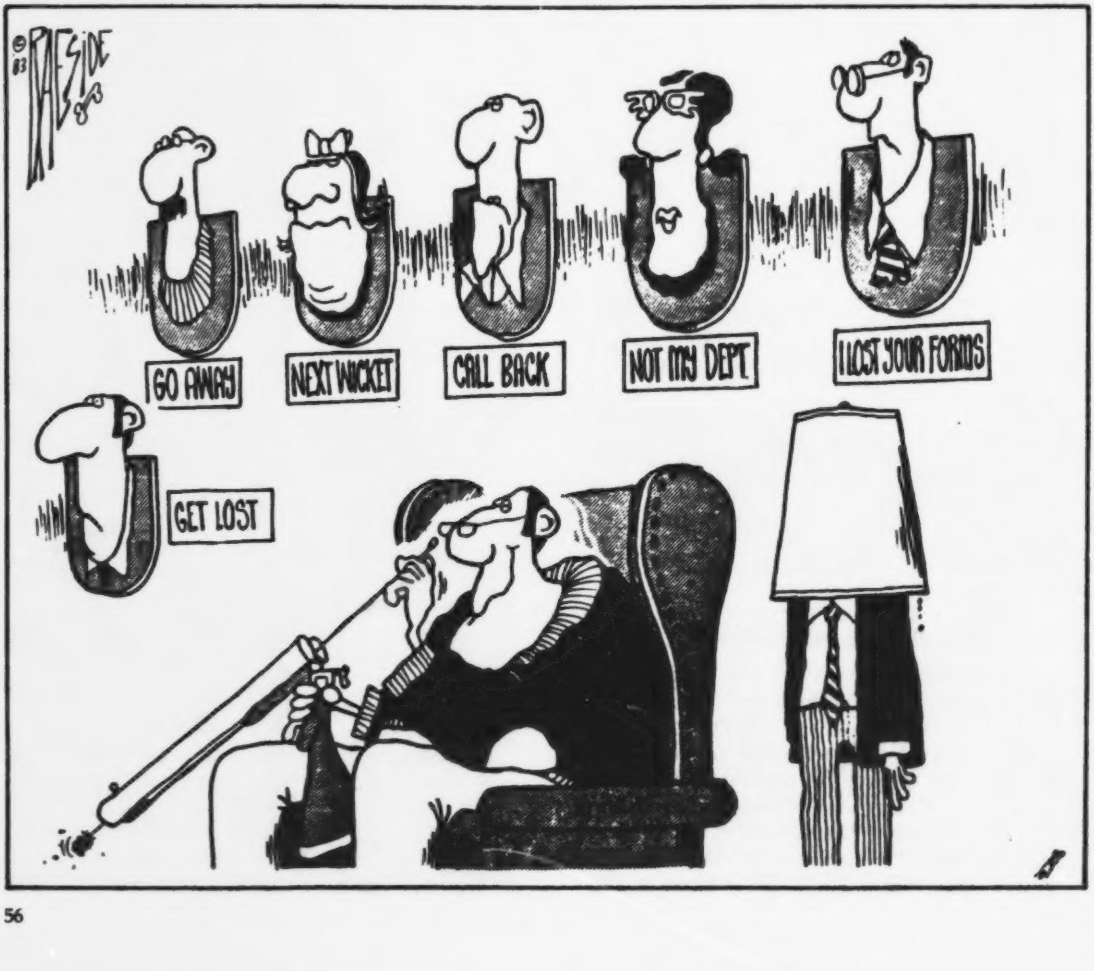
Another complaint involving a hunting licence had a happier ending.

The bureaucrat hunter

On 1 August, 1982, a new *Wildlife Act* and a number of related regulations came into effect. Section 1.10 of the *Wildlife Act* Firearm and Hunting Regulation required an applicant for a resident hunting licence to present for inspection a "resident hunter number card". This was a new requirement. During the summer, the Ministry's Fish and Wildlife Branch had mailed such cards to most persons who had applied for hunting licences the previous year, but for various reasons, some cards did not, apparently, reach their destinations.

My complainant had not received a card, though he had hunted annually for over 25 years. Not realizing that new procedures were in effect, he applied for a licence a few days before the duck-hunting season, and became increasingly frustrated as he was referred from one Ministry office to another in his search for a card. He had been offered various reasons, such as computer error, for his failure to receive the card in the mail, and was told his previous year's licence alone was insufficient evidence of his "resident" status. By the time he contacted my office, he was angry enough to go bureaucrat-hunting, with or without a licence!

My investigator contacted the appropriate official in the Ministry's headquarters in Victoria. Within one hour, the official verified the hunter's personal details on file, and arranged for him to pick up his licence from a location near his home. Although it can be said that the problem was partly due to everyone's lack of experience with the new regulations, I think this is an excellent example of how some officials react to an unexpected situation by wrapping it in red tape, while others will act intelligently and rapidly to cut the tape. As the hunter summed it up, the latter action "has put the smile back on my face!" He did not have to bag a bureaucrat and pay an exorbitant fee for such license. (CS 82-059)



Some changes in procedures were introduced during 1982, arising partly from my investigation of complaints. Besides those introduced early in the year and mentioned in my previous annual report, changes were made, or are presently being considered, to improve the notification of persons who might be affected by the issuance of pesticide permits, and to upgrade the quality of information supplied to the Pesticide Administrator by applicants for permits.

One area, however, remains unchanged. When a pesticide permit is issued, the permit holder is usually required to advertise the basic details in the local newspapers, as well as to post them in conspicuous locations near the treatment site. Hitherto, the required advertisements and postings have not included any mention of the possibility of appeal against the permit. Generally speaking, I find that the public is not well aware of its appeal rights, and several ministries during the past three years have agreed to my suggestions that these rights be given greater publicity. Although I have not yet made a formal recommendation on this matter, I was disappointed that this Ministry's officials would not accept suggestions that in future, advertisements should always mention the possibility of an appeal against the permit. (To quote the bureaucrat from a cartoon in my 1982 annual report "It's a pity that we can't share the beauty of our appeal system with the public. But you know what the public is like . . . once people know about the procedure they'll want to use it!").

One group of complainants were fortunate in the resolution of their concerns, despite their lack of knowledge of the appeal system.

Old Remo fights back

Early in 1981, the Ministry of Forests applied for, and received, a permit to spray a herbicide called Krenite F on a tract of forest land near a cluster of dwellings known as Old Remo, in the Terrace area. As required by the Pesticide Administrator, the issuing of the permit was advertised in the Terrace newspaper, and a copy was posted at the applicant's local office. The residents of Old Remo, however, did not become aware of the proposed pesticide treatment until 16 November, 1981, when a representative of the Ministry of Forests visited their homes to advise them of the permit, and to tell them of a public meeting about the matter, two days later. The "public meeting" turned out to be a hearing of the Pesticide Control Appeal Board, but since the residents of Old Remo had not earlier been registered as appellants, all they could do was to listen to the proceedings. They were disturbed by what they heard.

The people of Old Remo earned their living through market gardening, beekeeping, and floriculture. They feared that this very soluble pesticide would spread across the water table of the flood plain on which they lived, and affect all these activities. They were also afraid of Krenite F ending up in their well-water. They believed that the Pesticide Administrator may have been unaware of their community when he issued the permit, and were upset that they had not been informed of the situation early enough to allow them to appeal. After a petition from the residents failed to persuade the Ministry of Forests to refrain from spraying, they complained to me early in 1982.

My investigation showed that the Ministry of Forests had met the requirements of the Pesticide Administrator for publicizing the permit. However, the Administrator acknowledged that the map originally supplied by the Ministry of Forests (with their permit application) did not clearly indicate the presence of Old Remo, and he agreed to review the information, maps, and aerial photos submitted by the residents, to determine whether further conditions or restrictions should be included in the permit. I was also able to provide the residents with more information on the nature of Krenite F, obtained from the Department of Agriculture in Ottawa, which allayed some of their fears about movement of this substance in the water table. The residents agreed that their complaint was now resolved, and I closed the investigation.

There is an epilogue. Because the pesticide manufacturer declined to carry out further safety tests, the (federal) Department of Agriculture's registration for Krenite F lapsed at the end of 1981. This meant that it could not be used except under a special "research permit". The Department refused to issue such a permit to the Ministry of Forests, so the land around Old Remo was never actually sprayed with this pesticide. (CS 82-060)

The public is also concerned when apparent violations of pesticide permit conditions do not result in significant punitive or enforcement actions by the Ministry. The following complaint involved one of the few occasions when charges were actually laid.

Environment versus Forestry

In May 1982, the Pesticide Control Branch issued a permit to the Ministry of Forests to allow the aerial spraying of 2,4-D on tracts of forest land near Lillooet Lake. The permit included a list of 13 conditions, normal in such operations. For example, a 10-metre pesticide-free zone had to be maintained along all water bodies and wetland areas; and the treatment area had to be posted to inform the public of the treatment.

The actual spraying took place over a 9-day period in mid-May, and according to the complainant, many of the permit conditions were not met. The subsequent death of vegetation along large areas of lakeshore and wetland was noted by the Ministry of Environment, and an investigation was carried out by conservation officers, as well as officials of the federal government.

Charges under the *Pesticide Control Act* can be laid only within 6 months of an incident, according to section 3 (2) of the *Offence Act*.The Lillooet Tribal Council, part of whose lands had been affected by the spraying, was concerned that this deadline would pass before the Ministry laid any charges against those responsible for the apparent violations. Three weeks before the deadline (which was 10 November, 1982) the Council complained to me of the delay, and I immediately launched an investigation. My initial findings were that officials of both governments together had carried out a reasonably thorough investigation, including the taking of water and foliage samples for analysis. The Ministry was aware of the deadline, and decided to proceed on this matter at about the same time as my investigation commenced. Following approval by Crown counsel, charges were laid on 28 October against three officials of the Ministry of Forests.

The Tribal Council agreed that this action resolved the complaint, so I discontinued my investigation at that point. However, on my own initiative, I opened a separate investigation of the Ministry of Forests, to determine what action was being taken by that Ministry towards the prevention of further similar episodes. (CS 82-061)

ENVIRONMENTAL APPEAL BOARD

Since early in 1982, the Environmental Appeal Board, established under the *Environment Management Act*, has heard appeals that were formerly handled by the Pollution Control Board and the Pesticide Control Appeal Board, with most of its work apparently being in the pesticide area. Although this Board is an authority (as defined in the *Ombudsman Act*) in its own right, I am referring to it here because of its obvious close connections with the work of certain branches of the Ministry.

Complaints against the Board related to its procedures during hearings, the attitude or behaviour of board members, and, most of all, to the imposition in January 1982 of a $25 fee for each appeal submitted to the Board.

During the year, the Board [illegible] procedures to which some appellants had taken exception—for instance, board members no longer question an appellant concerning his or her residence, citizenship, etc. The $25 fee was created through a regulation, apparently (according to the board chairman) as an attempt to minimize abuses of the appeal procedure and to prove the good faith of appellants. At my request the chairman and senior Ministry officials gave serious consideration to recommending that these attempts to minimize abuse be achieved by alternative means. However, the Minister has recently informed me that he does not propose to eliminate the fee, nor to authorize the chairman to refund the fee under special circumstances. (Such refunds are possible under other statutes where a "deposit" is paid, but a minor change to the legislation might be required to authorize them in this case.) Should there be continuing complaints about this fee, I may re-examine the matter to determine whether this provision is "unjust, oppressive, or improperly discriminatory" under the circumstances.

A further point is that if the Ministry and the Board are attempting to minimize the number of appeals by continuing the $25 fee, then I consider that the Ministry has a moral obligation to take further steps which will minimize the *need for appeals* by the public. By requiring better information in permit applications or through stepping up the number of site inspections, for instance, the Ministry could, *prior to issuing a permit*, try to obtain more relevant information than it now gets about the sites of proposed pesticide treatments; and could address any identifiable public concerns through carefully-worded permit conditions. Public confidence might also increase if sanctions were applied more vigorously whenever permit conditions were violated. Such steps, once they became known to the public, might persuade some people that their interests were being protected and that an appeal to the Board was not necessary.

WATER MANAGEMENT

In my Annual Report for 1980, I included a complaint summary ("A matter of discretion" — CS 80-014) which described the refusal of the Comptroller of Water Rights to exercise his discretion to determine the value of a small parcel of land that was being expropriated under the *Water Act*. The regulations at that time under the *Water Act* provided that in expropriation cases, where an agreement over the value of land could not be reached, either one or three arbitrators could be appointed. Also, section 4.06 of the regulations provided that:

> "Where, in the Comptroller's opinion, the probable cost of having the amount of compensation determined by an arbitrator would be disproportionate to the value of the land affected, the amount of compensation to be paid and the

nature of the instrument to be executed shall be determined by the Comptroller or by any engineer named by him."

In the complaint I mentioned, the Comptroller finally exercised his discretion under this section. He requested a report and valuation from a firm of realtors and appraisers, and based on this, he determined that $150 should be paid for the 40 square metres of land involved. I had not realized (until after the event) that a firm had been engaged to conduct the appraisal, and I assume that the costs involved were borne by the Ministry.

I have only recently learned what happened subsequently. I had closed my investigation of the complaint on November 5, 1980. Two months later, on 15 January, 1981, section 4.06 of the regulations was repealed through Order in Council #131. At present, therefore, there is no inexpensive mechanism for the settlement of expropriation disputes over inexpensive or small parcels of land. In the recent investigation which brought this matter to light (not summarized in this report, since the investigation was not closed in 1982), the single arbitrator appointed by the Comptroller awarded compensation of $263.23, and charged a fee of $2,273.71. Because the award was higher (by $13.23) than the amount offered by the expropriator (my complainant), he was required by the regulations to pay the total arbitration fee—a staggering expense, compared to the cost of the land.

My staff have inquired why the Ministry requested the repeal of section 4.06, and why the Comptroller did not set limits on arbitration fees. (Section 4.11.1—"The costs of the arbitration proceedings shall be determined by the Comptroller.") The response has been that the Ministry has little expertise in evaluating land, and would incur unreasonable costs if it engaged professional firms to carry out this task each time; the limitation of arbitration costs could result in inaccurate appraisals and possibly in further appeals or controversy.

I am uneasy with the present situation. While I understand the Ministry's concerns about incurring unanticipated expenses, I find it hard to believe that section 4.06 envisaged the transfer of the cost of a commercial appraisal from a citizen to the Ministry. Rather, I believe that this section intended the Comptroller or the nominated engineer to carry out the appraisals in these minor cases, and to dispose of them expeditiously.

The repeal of this section is entirely to the advantage of the Comptroller and professional arbitrators [illegible], and to the disadvantage of any citizens who becomes involved in such proceedings.

In my last Annual Report, I mentioned receiving [illegible] who had been awaiting assistance under the Flood Protection Assistance Program, under which the Ministry provides up to 75 percent of the costs of approved measures to prevent floods or erosion. Because only about $500,000 annually was available through this program, only the most urgent cases could be dealt with each year. When funding for this program was cut completely because of restraint measures early in 1982, I anticipated a torrent of complaints. Strangely, I received none. The public, it seems, can understand and accept cancellation of a program, but not what it perceives as unfair administration of it.

The following summaries illustrate other aspects of water management.

Nobody told him anything

A farmer contacted my office with a complaint that his neighbour had been granted a licence to direct a creek in such a way that it flooded my complainant's land. My staff contacted the Ministry and I found that the neighbour was in the process of appealing the initial decision, seeking approval for diverting even more water into the creek. The outcome of this appeal, should it go in the neighbour's favour, had the potential to compound my complainant's flooding problem.

Yet, despite the fact that the complainant had repeatedly expressed his concern to the Ministry about his present flooding problem, no one had notified him that an appeal was underway, nor was he consulted for his position on the matter.

I provided the complainant with the information he needed, but this complaint raised a more general concern. Why did the Ministry not routinely notify people who might be adversely affected by the outcome, that an appeal was underway? This would give them an opportunity to raise their concerns before a decision is made.

I expressed my concerns to the Ministry. As a result, the Ministry agreed to implement procedures whereby people who may be adversely affected by an appeal under the *Water Act* will:

1. be notified of the appeal;
2. be given an opportunity to provide input before a decision is made;
3. receive notice of the outcome of the appeal.

These procedures should provide potentially affected third parties with a much better opportunity to be part of the decision-making process. (CS 82-062)

Province protects itself

The complainant owned a small riverside plot of land on which he wanted to build a house. He found that many similar plots nearby had cabins built on them without licences, and that the local system for approval and licensing seemed fairly loose. After arriving at an unclear oral arrangement with the local building inspector, he poured the foundations for a small house. Before he could get much further, however, he received a stop-work order. He was advised that his proposed house did not meet the requirements of a recent Regional District by-law. It was too close to the river ("setback"), and was not sufficiently elevated above the natural boundary of the river. He could be endangered if the river burst its banks.

The by-law provided that the requirements could be reduced with the approval of the Deputy Minister of Environment or his designate. Upon appeal to the Ministry official, the complainant's setback was accepted, but not the elevation. He was told the floor of the lower storey would have to be raised approximately six feet more, to win approval. Since the house was small, and the floor already well elevated above the ground, he envisaged himself living in some kind of odd tower-like structure if he complied.

The complainant was aware that some of his neighbours had recently received permission to extend their existing homes, in some cases by considerably more than the 25 percent (of floor area) which was the Ministry's guideline. Because the floors of these homes were considerably lower than his at the time, he felt the Ministry was "making the rules up as it went along", and he complained to me.

I was in somewhat of a quandary. During the past three years I have received a large number of complaints that the government did not adequately assist the victims of flooding. I was aware that the Ministry tried to minimize future problems of this kind by encouraging regional districts to adopt such by-laws, and to enforce them. Quite apart from any procedural considerations, would I really be doing the complainant a service by helping him to gain an exemption that could well result in future harm to him and his property?

I asked Ministry officials to reconsider the complainant's appeal, emphasizing that I was not pressing them to allow the requested exemption. However, if there were good reasons for retaining the existing requirements, they should be explained in detail to the complainant. He was entitled to know the general guidelines under which the decision was made, how they were applied in his case, and why his position, under these guidelines, differed from those of his neighbours.

The Ministry reviewed the matter and resolved the problem by allowing the house to be built as originally planned. However, to recognize that the floor elevation was not fully conforming to by-law standards, and to warn future potential owners of this fact, the complainant was to register a covenant against the title to the property. This covenant would "save harmless" the Province and the Regional District in the event of a flood, and was to run with the land and be perpetual. (CS 82-063)

Not so fast

The residents of a suburban development were shocked to receive a notice from their water utility last October. The notice announced an increase in the monthly rate from $12 to $18, and the cancellation of the $2 discount formerly allowed for prompt payment. Both these changes were to take effect on 1 January, 1983. In effect, any former prompt payer would suffer an increase of 80 percent in his monthly bill. Some of the outraged residents contacted me.

Water utilities fall under the supervision of the Comptroller of Water Rights. Any rate increases must be approved first by the Comptroller, and he normally requires the utility to publish details of its proposed increase, to allow any affected persons an opportunity to object. He then takes such objections into account in deciding on permissible rate increases.

My investigation showed that the utility in question had not yet applied to the Comptroller for an increase, nor had it been required to advertise its proposals, with instructions to the public on how objections should be lodged. The notice which had upset my complainants was apparently sent out due to a misunderstanding, or else in anticipation that the application for an increase in rates would be speedily approved. Unfortunately, the wording of this notice gave the impression that everything had already been settled.

Since the existing procedure provided an avenue of appeal for any persons affected by the proposed rate increase, I carefully explained the system to the complainants and declined to investigate the matter further. (CS 82-064)

In various parts of our Province there occur complex irrigation or drainage systems, often consisting of a series of lakes joined by rivers or canals, with the water levels being controlled by a series of dams, sluices, and floodgates. These are owned and operated, either independently or jointly, by

the Province, or various improvement districts or irrigation districts or the like. Complaints of flooding caused by inadequate control of sluices and floodgates can be difficult for me to handle. The controlling authority is sometimes difficult to identify, and my jurisdiction to investigate may therefore not be clear from the beginning. (In most cases improvement districts, for example, are not within my jurisdiction.) Furthermore, changing the water level to accommodate a complainant in one part of a complex water system may have adverse effects elsewhere.

Flooding a problem

The Vaseux Lake system has generated many complaints of this kind during 1982. This lake, as a component of the Okanagan Valley watershed, is downstream from the much larger Okanagan and Skaha Lakes. The watershed is regulated by the Ministry of Environment to minimize flooding threats in the valley. A series of twelve complaints was brought to me by Vaseux Lake residents concerning the increasing flood threat posed in recent years by irregularly fluctuating water levels on the lake.

The problem has been attributed by the Ministry to a greater-than-average snow melt, and to a build-up of silt and milfoil, the latter greatly reducing the lake's capacity. After two years of attempting to obtain action from the Ministry to increase channel capacity and to distribute water flows equitably (in their opinion) in times of crisis, the residents brought this matter to my attention. Following lengthy discussions with my staff, the Ministry agreed to ensure that Vaseux Lake will be maintained within safe limits, and to increase channel capacity through milfoil harvesting. The Ministry has also promised to seek other cost-effective solutions to increase channel capacity, and has agreed to provide for more public involvement in the lake level management process. I consider this to be a reasonable resolution of the majority of the flooding problems associated with Vaseux Lake.

Partially in response to these initial complaints, the level of Vaseux Lake was lowered in August by Ministry staff. One couple, occupying rented lakeside property, had an agreement with the owner to replace certain elements of the sewage system during the summer. With the lowering of the lake level in August, they commenced work. Then the water level was unexpectedly raised again, to 18 inches above its normal level. The holes prepared for the sewage system rapidly filled with water and remained that way, due to underground seepage. When the couple could obtain no coherent information on why the level had been raised again, or when it might return to normal, they complained to me.

After I intervened, an official informed the complainants that the water level would be lowered again within one week. Everything took place as planned, the complainants completed their work, and the matter was thus resolved. (CS 82-065)

In this particular case, the flooding was confined to the holes prepared for a sewage system, and no damage to the residence was involved. Not all cases are resolved so simply or rapidly. Sometimes, when heavy rainfall puts too much water in one of these systems, the authority responsible for controlling the gates and sluices has the unenviable task of having to decide which waterfront community will bear the brunt of the unavoidable flooding.

MINISTRY OF FINANCE

Declined, withdrawn, discontinued	22
Resolved: corrected during investigation	27
Substantiated: corrected after recommendation	3
Substantiated but not rectified	1
Not substantiated	25
Total number of cases closed	78
Number of cases open December 31, 1982	27

In past years, the majority of complaints I received about the Ministry of Finance stemmed from tax problems—primarily property tax and social service tax. These continued to be major sources of complaints this year, and were joined by a third major source of problems—the Courts of Revision.

PROPERTY TAXES

The Surveyor of Taxes administers property taxes in areas outside municipalities and regional districts; most of the complaints I received related to penalties for late payment of taxes, and to home owner grants.

This year the first penalty date for taxes was changed from July 31 to July 15, and a number of property owners complained to me that they were assessed a late payment penalty when they paid their taxes toward the end of July—as they had for many years. In these cases, although I sympathized with their position. I found the complaints not substantiated. Each tax notice has the penalty date clearly indicated, and as well, there was considerable comment on the change in due date.

There were other cases, however, in which late payment penalties were not the result of the penalty date change, but instead resulted from actions which weren't always easy to explain.

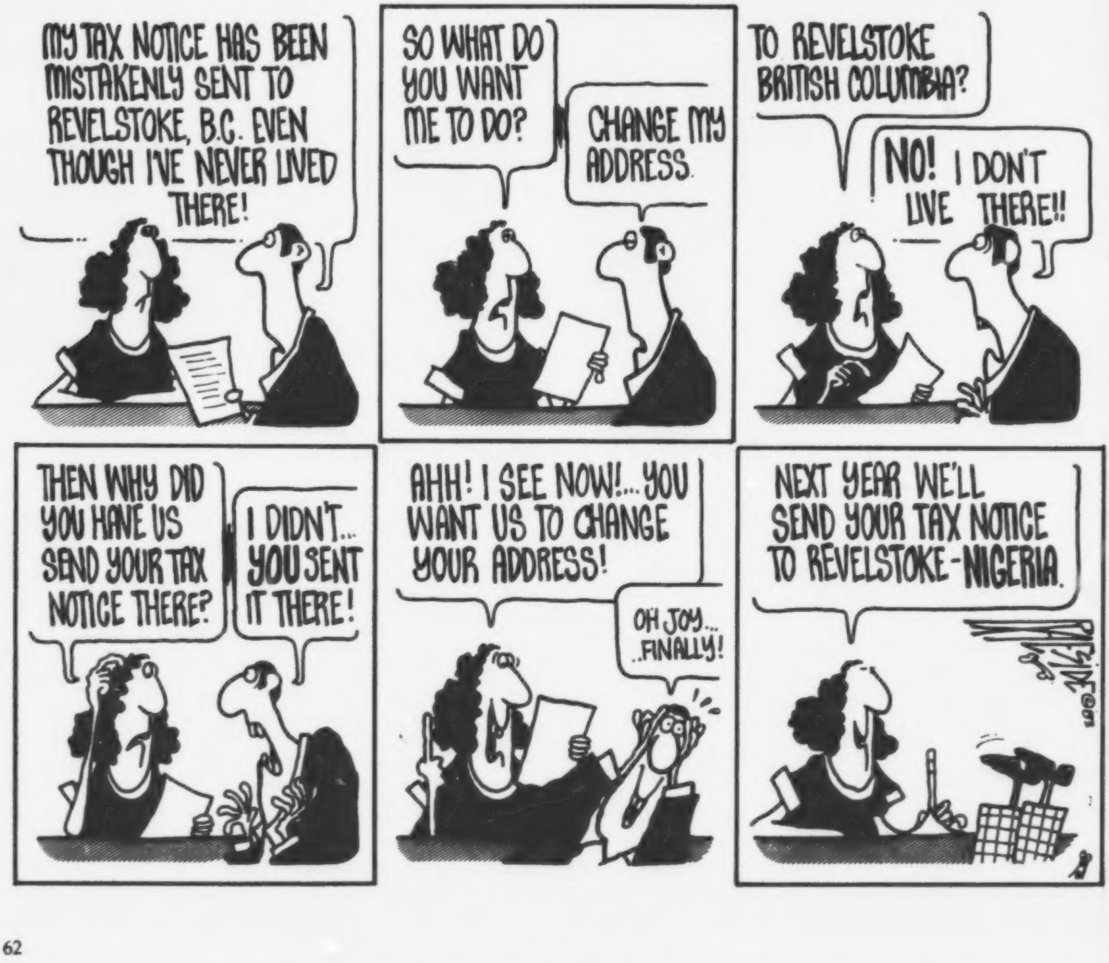
Never lived in Revelstoke

A man complained to me that the Surveyor of Taxes unfairly charged him a late payment penalty on his property taxes. He felt the penalty was unfair because the taxes were paid late due to an error on the part of the Surveyor of Taxes.

His 1981 tax notice had been sent to an unknown address in Revelstoke, whereas the complainant lived in another community and had never lived in Revelstoke. He eventually received the 1981 notice early in 1982. When he went to pay his taxes, government officials refused to accept his payment because he refused to pay the penalty on the 1981 taxes.

The Surveyor of Taxes advised that the Revelstoke address had been obtained from the Area Assessor, but since the required records had been destroyed, there was no longer any means of determining how the Area Assessor had obtained the address. The Surveyor of Taxes concluded that for some unknown reason an error had been made in recording the man's address, and that this was the cause of the late payment. He agreed to remove the penalty and interest from my complainant's 1981 taxes. (CS 82-066)

The other aspect of property taxes which serves as a consistent source of complaint is the Home Owner Grant. The Home Owner Grant can be applied against one's property taxes—provided one applies for the grant, and provided one meets the eligibility requirements. The grant is not given automatically, and since property owners' circumstances often change, each year an application must be made for


MY TAX NOTICE HAS BEEN MISTAKENLY SENT TO REVELSTOKE, B.C. EVEN THOUGH I'VE NEVER LIVED THERE!
SO WHAT DO YOU WANT ME TO DO?
CHANGE MY ADDRESS.
TO REVELSTOKE BRITISH COLUMBIA?
NO! I DON'T LIVE THERE!!
THEN WHY DID YOU HAVE US SEND YOUR TAX NOTICE THERE?
I DIDN'T... YOU SENT IT THERE!
AHH! I SEE NOW!... YOU WANT US TO CHANGE YOUR ADDRESS!
OH JOY... ..FINALLY!
NEXT YEAR WE'LL SEND YOUR TAX NOTICE TO REVELSTOKE-NIGERIA.

[illegible] for the grant.

A travelling man

A pensioner complained that he was denied a Home Owner Grant in 1980, although he had always been considered eligible in the past. Since his retirement, the complainant travelled frequently and stayed with friends and family in the south during the harsh winters in the Slocan, where his home was located. For convenience, he received mail at his daughter's home in Squamish.

Because of his frequent absences, the Ministry of Finance had taken the position that the Slocan home was not the complainant's principal residence and he was, therefore, ineligible for a grant under the legislation. Under the *Home Owner Grant Act*, a grant is only payable for an individual's principal residence, which is defined as being the usual place where an individual, permanently living in British Columbia, makes his home.

The complainant was concerned that he would be required to remain at home for a given period of time simply to meet the principal residence requirements for obtaining the grant.

The Ministry appeared to take the position that an individual must spend a preponderance of his time during the taxation year at his home, to give it principal residence status. I informed the Ministry of my view that this position might be contrary to law, based on a test laid down by the Supreme Court of Canada in determining residence for the purposes of taxation. The Ministry did not reply to my comments on its apparent interpretation of the meaning of "principal residence". However, I decided not to pursue the matter further because the complainant's 1980 grant application was subsequently approved. The basis given by the Ministry for this decision was that it had reviewed two affidavits submitted by the complainant and was now satisfied that he spent more time in overnight residence on his property at Slocan than he did in any other place of residence. (CS 82-067)

[illegible] Home Owner Grant is denied, the Surveyor of Taxes will request additional information [illegible]

Explanation and apology

I received a complaint that the Surveyor of Taxes had failed to advise a man on whether or not his application for a Home Owner Grant was accepted.

The man had been requested by the Surveyor of Taxes to provide additional information regarding the extent of his residency on the property. He responded within two weeks of the request, but heard nothing further until more than a month later, when he received a bill equivalent to the amount of the grant plus a late payment penalty. A month later, he still had received no explanation and his cheque had not been cashed.

My investigation revealed that the man's application had been denied because he did not spend sufficient time in residence on the property in question. However, his correspondence had been misfiled and he had never been provided with an explanation.

Staff from the office of the Surveyor of Taxes called the complainant, explained the reason for the denial and apologized for the delay; the Surveyor of Taxes also agreed not to assess the late payment penalty. (CS 82-068)

SOCIAL SERVICE TAX

Social Service Tax is to be charged on all purchases of tangible personal property within the province, but there are exceptions both by legislation and by regulation. Moreover, the Ministry has developed a complex manual of instructions intended to assist field staff in determining when the tax should and should not be charged. Still, many problems arise pertaining to the administration of the tax.

One area in which I have noted an amazing array of problems is in vehicle transactions. I have received complaints about situations in which people exchanged cars, gave cars away, sold cars to their [illegible], came in from other provinces to purchase cars, or purchased cars and left the province. A citizen in such circumstances might deal with staff of the Consumer Taxation Branch, a Government Agent, an automobile dealership, I.C.B.C., and/or the Motor Vehicle Branch; and he might receive conflicting information from these different sources. Since a car must be registered and insured before being driven, a person is often at the mercy of I.C.B.C. or the Motor Vehicle Branch to determine whether or not the tax should be charged, and neither of these bodies is as familiar with the legislation and instructions as is the Consumer Taxation Branch.

Trying to collect twice

A man complained to me that the Ministry of Finance tried to charge him Social Service Tax twice on a vehicle which had been designed to accommodate his handicap.

The man had owned and operated a small business as a sole proprietorship. Among the assets of that business was a vehicle designed for my complainant's requirements. When he retired, my complainant sold all the assets of his business, except the vehicle. When he later attempted to transfer the registration from the business name to his own name, he was advised that he would have to pay sales tax. This information had been given to him by the Motor Vehicle Branch, and was initially confirmed by the Ministry of Finance.

The Ministry, however, makes a distinction between transfers from corporations to individuals and transfers from sole proprietorships to individuals. The Motor Vehicle Branch appeared to be unaware of this distinction. Transfers from sole proprietorships to individuals are not taxable transactions. The local office of the Motor Vehicle Branch was advised by the Ministry of Finance that the transfer in question was not taxable, and my complainant registered his vehicle in his own name, without paying Social Service Tax. (CS 82-069)

Truck went nowhere

A man complained to me that the Ministry of Finance had unfairly refused to grant him a refund of Social Service Tax. The complainant had arranged to sell his truck to another person on the understanding that the person would be able to arrange financing for the purchase. The prospective purchaser had no money, but had to have the truck registered in his name to obtain employment with a moving company. To facilitate this process, the complainant transferred the registration of the truck to the prospective buyer. I.C.B.C. required that Social Service Tax in the amount of $440.00 be paid to complete this transaction; since the prospective purchaser had no money, the complainant paid the tax on his behalf.

Shortly after, the prospective purchaser learned that he could not arrange the required financing and was unable to purchase the truck. The truck's registration was transferred back to the complainant, and he applied for a refund of the tax he had paid. The Ministry refused, stating first that the $440.00 had been for licence plates rather than Social Service Tax, and stating later that since the truck had been registered in the other person's name for a two month period, use was made of the truck by the other person and the tax would apply.

My investigation indicated that the truck had never been moved out of the complainant's yard, that the prospective purchaser had not made use of it, and that the complainant had received no money from the proposed transaction. The Ministry of Finance obtained confirmation from I.C.B.C. that the complainant's $440.00 cheque was for social service tax and not for plates. On the basis of this new set of facts, the Ministry agreed that a refund was in order, and issued the complainant a cheque for the required amount. (CS 82-070)

No proof, no money

A resident of Saskatchewan complained to me about double taxation on the purchase of a vehicle. She had arranged to purchase a vehicle in British Columbia while on a holiday here, and to have it licensed, registered and insured in her home province. She paid Social Service Tax when she purchased the car here, and she paid the equivalent Saskatchewan sales tax in order to obtain Saskatchewan registration. When she returned to Saskatchewan, she applied for a refund of the B.C. tax, providing information on the amount paid, date of purchase and date she left the province. Her application was rejected because the information she provided indicated that she had not removed the car from B.C. within the required 30 days after purchase.

The complainant advised me that she had in fact left B.C. within 30 days, visiting Seattle before returning to Saskatchewan. I forwarded this information to the Ministry and asked that it reconsider its position. The Ministry agreed, but asked for additional documentation to confirm the date the complainant had left B.C., since she had initially given them a different date.

I considered this a fair request but the complainant was unable to provide any form of documentation—hotel bills, charge slips, customs forms, etc.—to confirm the amended dates she had provided. As a result she was unable to obtain the refund.

I referred her to the Saskatchewan Ombudsman to determine whether she would be eligible for a refund of the Saskatchewan tax. (CS 82-071)

It may be that the volume of complaints about Social Service Tax is in part a reflection of the fact there are many ways in which vehicle transactions are brought to the attention of government officials, while other types of transactions may be less obvious. A number of these vehicle-related problems, however, could be avoided if the rules and regulations were better communicated to the public, and if there were more consistent application of the regulations on the part of the various agencies involved.

The subject is an ideal one for discussion. Right now many consumers must pay the tax and learn that through persistence and contact with the

proper authorities they will be able to obtain a refund. If the legislation and regulations cannot be amended, I suggest that the ministry devise an appeal mechanism which can make a ruling before the person is required to pay the tax.

I have also received some complaints about the Ministry's approach to the collection of Social Service Tax. The relevant legislation gives the Ministry a number of fairly effective tools to use if for one reason or another, the tax has not been remitted to the government. In most cases these tools are used properly and fairly; in cases where they are not, the Ministry has been co-operative in taking corrective action.

Lien removed

A woman complained to me that the Ministry had placed a lien against her home—a personal asset owned jointly with her husband—in an attempt to collect outstanding Social Service Tax owed by a limited company in which her husband was involved. She felt that this was unfair, since the home was a personal asset, while the money was owed by the company.

I learned that the woman's husband and another person had initially commenced business as a partnership, and had subsequently incorporated to form a limited company. They had a copy of a letter in which they had advised the Ministry of the change. However, the Ministry had no record of receiving the letter, and had continued to treat the business as a partnership.

I provided the Ministry with another copy of the letter, and with a copy of the Certificate of Incorporation, and the Ministry took steps to remove the lien from my complainant's home. (CS 82-072)

In addition to Social Service Tax, the Ministry also administers a number of other consumer taxes; one of these is the Motive Fuel Use Tax, and its administration brought some questions regarding refund procedures.

Our tax or theirs

A man complained to me that the Ministry of Finance was making unfair requirements regarding documentation necessary to support an application for a refund under the *Motive Fuel Use Tax Act*. The man's business owned a fleet of trucks which occasionally travelled to other provinces. The Motive Fuel Use Tax was paid on each purchase of gas in British Columbia, and as provided for in the Act, the complainant applied for a refund of the tax paid on fuel purchased in B.C. but used in other provinces. He supplied the Ministry with information on kilometres travelled in other provinces and states, on the places the fuel was furnished, and he also supplied purchase receipts. However, the Ministry required him to prove that Motive Fuel Use Tax had been paid in the other jurisdictions, before granting him the refund.

In my view, by taking this position, the Ministry assumed responsibility for the enforcement of other jurisdictions' legislation. I advised the Ministry that if this were the case, its decision to reject the refund could be considered to have been based on irrelevant considerations.

The Ministry stated that the information on Motive Fuel Use Tax paid to other jurisdictions was used to corroborate refund claims, and that the refund application had been questioned because of discrepancies in information on distances travelled in other provinces. Subsequently, the Ministry audited my complainant's records and confirmed the figures he had provided to the Ministry. His refund cheque was issued shortly thereafter. (CS 82-073)

COURTS OF REVISION

The Courts of Revision formed a third major source of complaints this year. The Courts constitute the first level of appeal on property assessments; the members are appointed by the Cabinet, and the administration of the Courts is the responsibility of the Government Agent in the Ministry of Finance. This arrangement may not be the best one, since the B.C. Assessment Authority, whose decision is being appealed, also reports to the Legislative Assembly through the Minister of Finance; in the view of some, the independence of the Courts of Revision is restricted by their association with the Ministry of Finance.

Steps in the right direction

During 1982, I received a great number of complaints about the 1982 Courts of Revision. The increase was undoubtedly due to the fact that in 1982, many property owners were saddled with large assessment increases, which they felt the need to appeal. Some complaints were launched by individuals, others by citizens' groups. The complaints included the following: that the public was not provided with adequate information on how to appeal to the Courts of Revision; that individuals appearing before specific Courts of Revision were not given a fair opportunity to present their cases; that certain members of Courts of Revision displayed biased, unsympathetic, off-hand, rushed, or cynical attitudes, demonstrated a lack of training, and followed improper procedures; that there was insufficient information available about the methods used to determine actual property values; and that the B.C. Assessment Authority appeared to be playing an inappropriate role in the proceedings of the Courts of Revision.

After considerable correspondence and discussion, the Ministry of Finance agreed that there was a need for change, and undertook a number of steps which should result in improvements in the 1983 Courts of Revision. The changes included the following:

—The instructions to the members of the 1983 Courts of Revision request the members to show consideration and understanding to appellants, to use everyday language, and to allow sufficient time for response.

—A new training program has been established for the chairmen of the Courts of Revision, with stress placed on complaints regarding the conduct of members of the Courts of Revision.

—The Assessor will no longer perform the administrative functions of the Courts of Revision; Regional Managers of Government Agents will perform this role instead.

—A glossary of terms commonly used in the Courts of Revision has been developed and will be made available to appellants.

—A pamphlet has been prepared describing the operations of the Courts of Revision, the procedure to be followed when making an appeal, and suggestions regarding the points to be considered by the appellant in making his appeal.

In my view these changes represent important first steps towards reducing the difficulties which the public experienced with the Courts of Revision during 1982. In some cases further changes may be necessary, and I intend to monitor the response to the 1983 Courts of Revision to determine if further action is required. (CS 82-074)

Not all of the complaints about the Courts of Revision were from appellants; the members of the Courts also had problems.

Legitimate travel expenses

I received a complaint from a member of a Court of Revision that the Ministry of Finance had refused to reimburse her for expenses incurred in connection with her duties on the Court of Revision. The instructions to members of the Courts of Revision state that members are entitled to "reasonable and necessary travel and out-of-pocket expenses incurred in carrying out their duties". My complainant lives 65 km from the location of the Court of Revision and had submitted a claim for $1,800 for expenses incurred while serving on the Court of Revision. The Ministry had refused, stating that travel expenses were payable only when the Court of Revision as a whole moved from one location to another.

This distinction was not clear in the instructional material which had been provided to Court members. Ministry staff were persuaded to reconsider her case and subsequently approached the Minister on her behalf. The Minister approved the issuance of funds to cover her expenses. (CS 82-075)

OTHER COMPLAINTS

I have also received a variety of complaints pertaining to other types of problems people have had with the Ministry of Finance.

After 20 years, they got it right

I received a complaint from a man who felt he had been paid an incorrect amount of interest on funds which had been paid into court. The man had been party to a court action resulting from a dispute over a deposit paid on a house. The funds involved were paid into court on February 15, 1982, and were paid out on May 21, 1982. Interest was paid for full months only, i.e. for March and April. The complainant felt interest should have been paid for the full period the funds were held by the court.

My investigation determined that the payment of interest, in cases such as this, is governed by the B. C. Supreme Court Rules. The pertinent rule, #58, states that interest is to be paid on all funds held in court for a period exceeding three months, and that interest is payable on all money up to $100,000 from the first day of the month following payment into court. The rule does not specify when interest ceases in such cases, and does not require interest to be paid for full months only.

Ministry of Finance staff confirmed that for the past 20 years it had been their practice to pay interest for full months only, in the belief that this was in keeping with the intent of the Rules. However, they also conceded that there was no provision in the Rules to support their practice of stopping the payment of interest at the end of a full month. They agreed to issue the complainant a cheque for interest for the period from May 1 to May 21. (CS 82-076)

Enough is enough

A retired public servant complained to my office that after retiring he was required to appear as a witness in court in a case relating to his former employer, but received no pay from the government for the days he spent in court.

I found that his court appearance had nothing to do with his former employer; rather, he had been called as a witness regarding the possible financial impact of an automobile accident that had taken place in 1978. The accident involved another former public servant, with whose character and reliability the complainant was familiar.

For two reasons, I found the complaint not substantiated. The court appearance did not relate to the complainant's former employment, and the complainant had been issued witness fees and is also receiving a public service pension. Even if he had appeared in court about a matter related to his former employment, he would have been adequately compensated. (CS 82-077)

Easy on the mustard

The operator of a wiener and sausage stand at a public rest area overlooking a lake in the Okanagan Valley complained that his business licence, issued by the Government Agent in Vernon, was misleading, and that as a result he had been unfairly ticketed by the R.C.M.P. The complainant had received tickets on two occasions for contravening a section of the *Motor Vehicle Act* which prohibits a person from parking a vehicle on the highway for the principal purpose of selling certain foods and other commodities. He believed that other similar businesses were allowed to continue operating. The licence which the Government Agent had issued to him stated that the complainant was authorized to operate a wiener and sausage vending business "at highways and other".

The actions of the R.C.M.P. are not within my jurisdiction and I was, therefore, unable to investigate the complainant's allegation that the R.C.M.P. was enforcing the relevant provisions of the *Motor Vehicle Act* in an improperly discriminatory manner.

The complainant's licence had been issued in June, 1982, but as of July, 1982, Government Agents informed licencees of the provisions of the relevant section of the *Motor Vehicle Act* whenever they issued licences of this type. The Government Agent had also discontinued the practice of using phrases such as that contained on the complainant's business licence.

The complainant had disputed the two tickets successfully in court. The Crown Prosecutor decided not to proceed with the charges. Since the complainant did not have to pay any fine for the violation notices, and the Government Agent had taken appropriate action, I decided not to pursue the matter further. (CS 82-078)

Generally speaking, co-operation of Ministry staff has been excellent, requested information is provided promptly and the Ministry has generally demonstrated a willingness to correct situations which appear unfair to the public.

MINISTRY OF FORESTS

Declined, withdrawn, discontinued	7
Resolved: corrected during investigation	11
Substantiated: corrected after recommendation	5
Substantiated but not rectified	2
Not substantiated	10
Total number of cases closed	35
Number of cases open December 31, 1982	44

[illegible]

RANGE PROBLEMS

Grazing permits seem to be a source of an increasing number of complaints, perhaps reflecting an increase in conflicting demands on a diminishing land base. The complaints include problems such as restrictions in terms of permitted grazing, rejections of permit applications, procedures relating to the advertising of available range, and wandering cattle.

Officer, arrest those cattle

A man complained to me that the Ministry of Forests had failed to enforce the requirements of a grazing permit and as a result, cattle were trampling through his yard and garden.

The man lived in a subdivision which had been developed some time ago near a Crown range unit. He and a number of other families had experienced problems resulting from wandering

THE MINISTRY OF FORESTS SAID IT WAS OUR RESPONSIBILITY TO KEEP THE FRONT DOOR LOCKED.... AND THE FARMER SAID IT WAS OUR RESPONSIBILITY TO SEE THEY DON'T STAY UP TOO LATE!
RAESIDE © 83

cattle. The owner of the cattle was unwilling to take steps to correct the situation, advising those affected that the area was "open range" and his cattle were free to stray at will. Similarly, neither the R.C.M.P., nor the Ministry of Forests were willing or able to take action. My complainant felt that the cattle owner's grazing permit should be revoked because of his failure to contain his animals.

However, the *Range Act*, under which grazing permits are issued, is more concerned with keeping non-permit cattle off the range than with the problem at hand, and thus the Ministry's powers with respect to this situation are unclear. It is clear that, except where Pound Districts have been established, there is no requirement to fence Crown land, and the responsibility lies with the private landowner to fence his land off from Crown land.

Where Pound Districts have been established, however, there is a responsibility on the user of Crown land to ensure that his animals do not stray off the Crown land. Since there were approximately 15 families affected by this one cattle owner, it seemed that the establishment of a Pound District might constitute an acceptable resolution of the problem. I provided my complainant with information on how to establish a Pound District. (CS 82-079)

Let's try it one more time

Two parties complained to me about the procedures followed by the Ministry of Forests in awarding range rights. An additional range allocation had become available on a particular Crown range unit, and the Ministry of Forests invited applications for the new range opportunity. My complainants were among 14 applicants who applied for the range. Ministry of Forests staff evaluated the applicants by means of a newly-developed rating system and advised the applicants of their intent to award the range to three of the applicants.

My complainants and others objected, and as a result the applications were re-evaluated and a different combination of three applicants was chosen. Again there were objections, and again the applications were re-evaluated, this time with a new rating system. The outcome was that the second combination of three applicants was confirmed by the Minister of Forests. An Appeal Board was then appointed to consider the matter, and heard presentations from nine of the applicants. The Board recommended changes in the rating system used by Ministry staff; the new rating system was applied and the same combination of three applicants was awarded the range.

My complainants felt that the Ministry had not properly advised them of their appeal rights, had not consulted with, nor followed the recommendation of the local livestock association, had used a poor rating procedure and had rated them unfairly.

I found that some of these points appeared to be correct. The Ministry had initially failed to advise the unsuccessful applicants of their appeal rights, although the successful applicants had been told that the choice was subject to possible appeal. The Ministry corrected this shortcoming when it announced its second combination of applicants.

Similarly, I confirmed that the Ministry had not consulted with the local livestock association before making its initial announcement, although this, too, was corrected before the second set of evaluations. There is a requirement under the *Ministry of Forests Act* to consult with the public in planning resource use. However, I did not find that the Ministry was under any obligation to follow the recommendations of the local livestock association.

I also did not find that the rating procedure used by the Ministry was improper or inconsistent with the requirements of the *Range Act* but I found that a number of the ratings had been based on the personal experience of Forest Service staff, while the applicants' individual files contained little to confirm or refute the ratings. The Ministry corrected this procedure and now requires a written report of each inspection to be made available to each permittee and to be included in each permittee's file.

Since the Ministry had already taken the required corrective action, I made no recommendations in this matter. (CS 82-080)

[redacted]

Timberrr . . .

A man and his MLA complained to me that the Minister of Forests, without justification, prevented him from working on two timber sales. The Ministry had advertised the sales as Category 2 timber sales under the Ministry's Small Business Program; this means that the timber sales were open to those people registered as Category 2 small business enterprises, and in order to register in Category 2, it was necessary to own a timber processing facility. The complainant owned a timber processing facility, and was registered in Category 2. He had bid on and was awarded the two sales. He had paid his deposit, and his licence documents had been signed by himself and a representative of the Ministry. One of the conditions of his licence was that he submit his operational plans for approval by Ministry staff. However, the Minister of Forests directed his staff not to approve operations on the timber sales, and this effectively prevented the complainant from working on the sales.

It appeared that the Minister's directive had been issued in response to protests from persons who had also bid on, but who had not been awarded the two timber sales. They asked the Minister to cancel the two timber sale licences on the grounds that my complainant was working for a forest products company, was not from the local area, and did not intend to process the timber in his timber processing facility. The Minister advised my complainant that his actions were contrary to the spirit and intent of the Small Business Program; he also suggested that my complainant consider surrendering the timber sales and/or reregistering as a Category 1 small business enterprise (i.e. one without a timber processing facility).

I determined that my complainant did in fact work for a forest products company at the time he bid on the sales but he did not bid on behalf of the company (the company was not eligible to bid). He tendered his resignation as soon as he learned that he had been awarded the sales. Moreover, the regulations pertaining to the Small Business Program did not prohibit a person from applying for a small business sale while in the employ of a forest products company.

Similarly, the regulations did not limit eligibility to local loggers, and did not require the timber to be processed in the applicant's timber processing facility. In short, my complainant had not transgressed any of the pertinent regulations, and had in fact contacted Ministry staff prior to the competition to ensure that the regulations would not prohibit his bidding on the sales. I could find no other available information on the spirit and intent of the program.

I recommended that the Minister rescind his directive and allow his staff to approve the operational plans in the normal fashion. The Minister initially refused on the grounds that the complainant's actions contravened the spirit and intent of the Small Business Program. I pointed out that it was unreasonable to expect the complainant to know about any additional restrictions which were not embodied in any reasonably accessible form, and that if changes were required in the Small Business regulations, it was unfair to penalize the complainant because those changes had not yet been made.

After considerable correspondence and discussion, the Minister advised me that he had directed his staff to approve the complainant's operational plans in the usual fashion. (CS 82-081)

TRANSFER OF TIMBER RIGHTS

During my investigation of a complaint about the transfer of timber rights, it came to my attention that, although the Minister has the power to approve the transfer of timber rights, there is nothing in the legislation or regulations which would provide guidance as to when transfers should or should not be granted. I brought this to the attention of the Ministry and proposed that criteria be established to assist in the evaluation of [illegible]. The Ministry responded that it had asked for the development of a policy on this matter, [illegible] to the same concerns which I had raised.

This should make transfer matters clearer and more consistent in the future. Unfortunately, it's a bit late to help the group of employees who first brought the matter to my attention.

No promises made and none kept

I received a complaint on behalf of the former employees of a lumber company which had been sold to another lumber company. Since the first company held timber licences issued by the Ministry of Forests, it was necessary to obtain the permission of the Minister of Forests before the company could be sold. In this case, the employees had been told that they would be employed by the new company and they believed that the Minister had approved the sale on the understanding that there would be no job loss as a result of the sale. When the sale was completed, however, only two of 77 employees actually obtained employment with the new company. The employees felt the Minister may have made his decision on the basis of misrepresentations or may have attached to his approval conditions which had not been met.

My investigation showed that neither was the case. The proposal to purchase the company stated that the additional timber would be used in another mill belonging to the purchasing company, and that the loss of jobs at one operation would be generally offset by an increase in jobs at the other location. There were no promises that the specific individuals from one mill would be given the increased jobs at the other mill. As it happens, the new mill site was unionized while the employees who were my complainants were not union members, and very few of them obtained jobs.

Similarly, no conditions were attached to the Minister's approval of the sale, so it could not be said that there were conditions which had not been met. Under these circumstances, I concluded that the Ministry had not acted improperly towards these complainants.(CS 82-082)

FOREST FIRES

Forest fires result in a small, but extremely varied number of complaints to my office. Some of these have to do with compensation for [illegible] in a fire, or for payment for fighting a fire.

Choppers slide into homebase—free!

A man complained to me that the Ministry of Forests had made use of his private property as a helicopter base and had refused him compensation for such use. The Ministry had used the complainant's baseball field for landings and for storage of fuel and equipment during a three-week period, while fighting a fire in the area. No prior arrangements had been made for use of the field, and no attempt was made to contact the owner or his family during the period of use.

The Ministry had refused the man's request for compensation on the grounds that no prior arrangement had been made for payment and the field had been used in the belief that it was a community baseball field. My investigation determined that the field, although privately owned, was used as a community baseball field, and that a number of helicopter companies had used the field free of charge in the past. For those reasons, and because no damage had been caused, I concluded that the Ministry was not acting unfairly in refusing to pay compensation.

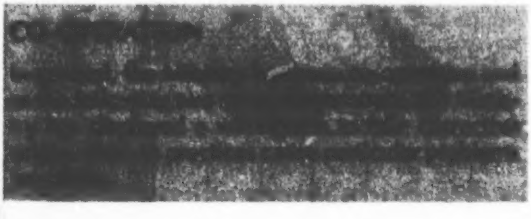
The complainant also wanted a commitment from the Ministry that if the field were to be used in the future, he would be given advance notice so that he would be able to enter into landing, storage and payment arrangements with the Ministry. The Ministry agreed to provide such notice. (CS 82-083)

Appeal, appeal, appeal

I have always considered it important that individuals be advised of any appeal rights which may be available to them in a given situation. The Ministry of Forests has not always shared this view, but after lengthy discussion, the Ministry has now agreed to advise persons of their appeal rights.

The issue was initially raised as part of a complaint about a fire. A man had complained to me that he and his employees had not been paid for their efforts in fighting a fire. My investigation showed that the fire had started in the area where the complainant and his crew had been planting trees, and that the fire had subsequently been attributed to one of his crew. The *Forest Act* states that compensation for fire fighting is not payable if it is determined that the fire was caused by a person employed on the area but the Act also includes a right to appeal the decision not to award compensation, and the complainant was not advised of this right.

I recommended that the Ministry adopt a general practice of advising persons of appeal rights available to them. Ministry staff initially expressed the fear that if people knew about appeal rights, they would use them, and the Ministry would be inundated with appeals. After further discussion, the Ministry stated that it would accept my recommendation. However, the Ministry later retracted this position, apparently as a result of difficulties encountered in determining how it could be implemented. Discussion continued, and finally the Ministry accepted my recommendation in modified form and produced two pamphlets, one concerning appeal rights under the *Forest Act*, and the other concerning appeal rights under the *Range Act*. These pamphlets will be provided to everyone who enters into an agreement with the Ministry of Forests. (CS 82-084)



Can't see the trees for red tape

A man complained to me that a dispute between two government agencies prevented him from working on a tree-planting contract. The man and his two partners had bid on and had been awarded a small tree-planting contract. One of the contract conditions was that the three partners were to arrange their own Workers' Compensation Board coverage. They attempted to do this but were told that they were ineligible for coverage because they had no employees. Furthermore, the Board advised the three partners that they would be considered contractual labourers for the Forest Service and would be included in the Ministry of Forests' W.C.B. coverage.

The Forest Service did not consider the three men contractual labourers, and insisted that tree planters are independent contractors responsible for arranging their own coverage.

It was clear that the matter was essentially a dispute between the Ministry of Forests and the Workers' Compensation Board. However, the 8,000 trees in question had to be planted during a very short and specific period of time because of changing weather and soil conditions. There was a very real possibility that my complainant might lose the contract, while the two authorities attempted to settle their differences.

Ministry of Forests staff agreed that these three individuals should not be made to suffer because of the dispute. As an interim measure, the three were hired as Forest Service contractual labourers and were included in the Ministry's W.C.B. coverage for the duration of the tree planting task.

The Ministry later advised me that its differences with the Workers' Compensation Board had been settled. They had agreed that the Board would not provide coverage to individual contractors without employees, nor to partners without employees. The Ministry has advised its staff that if a contract is awarded to a one-person operation, that person be hired on an hourly basis as a Ministry employee. Partnerships will from now on be advised to arrange their working relationship so that there is at least one employee. (CS 82-085)

Ministry gives back parking spaces

I received a complaint that in one small B.C. town, the Ministry of Forests had converted its parking spaces into a vehicle compound and that as a result, Ministry staff and visitors were parking on nearby streets and interfering with parking for commercial operations. The problem became even more acute in winter, when high snow banks obscured visibility and further reduced available parking. The complainant pointed out that this not only interfered with parking for businesses in the area, but also contravened the town's by-laws.

The Ministry confirmed that it had converted its 12 parking spaces into a secure compound for

Ministry vehicles. However, Ministry officials stated that they were not aware that in doing so, they had transgressed the town's by-laws. My staff provided the Ministry with a copy of the by-law requiring that one off-street space be provided for every 45 square feet of office space occupied, and that those spaces be available for the use of employees, customers and visitors, and not for company vehicles only.

The Ministry then asked the B.C. Buildings Corporation to provide the Ministry with 20 additional off-street parking spaces. It was later confirmed that the spaces were obtained and would be ready for use before the winter. (CS 82-086)

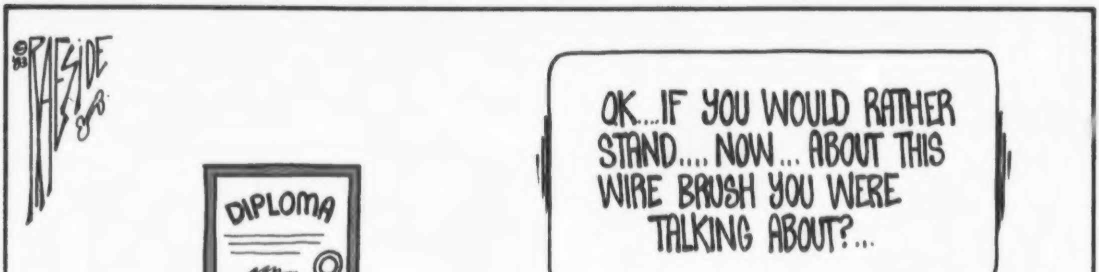
MINISTRY OF HEALTH

Declined, withdrawn, discontinued	56
Resolved: corrected during investigation	71
Substantiated: corrected after recommendation	3
Substantiated but not rectified	2
Not substantiated	31
Total number of cases closed	163
Number of cases open December 31, 1982	71

The Ministry of Health is one of the largest Ministries in the government—measured by its staff, its budget, and the activities it regulates. The number of complaints has increased, compared to the previous year. This rise reflects the general increase of complaints my office is receiving. Throughout 1982, Ministry staff have been co-operative.

MEDICAL INSURANCE

Most people are familiar with medical care insurance. The Medical Services Plan covers a wide range of medical services and although the program appears to be running smoothly, I get a fair number of complaints, most of which involve the question of eligibility. These are usually resolved with the Ministry, which explains the high number of resolved cases in the accompanying statistics.


©83 RAESIDE
OK...IF YOU WOULD RATHER STAND.... NOW... ABOUT THIS WIRE BRUSH YOU WERE TALKING ABOUT?...
DIPLOMA
MINISTRY OF HEALTH

Ouch

A patient complained that the Medical Services Plan would not pay for his doctor's bill. This senior citizen has carried on a lengthy series of spicy correspondence with the Ministry. M.S.P. had cancelled the man's coverage prior to his doctor's visit because he had not paid his premiums. Before taking this action, M.S.P. had sent the complainant a series of letters informing him that his coverage would be cancelled if he did not pay his premiums.

I did not find any evidence that the complainant had, in fact, paid his premiums but M.S.P. agreed to reinstate the subscriber retroactively, if he made the payments.

I could not reach the complainant to have him sign the necessary M.S.P. forms. As the complainant was a resident of Pender Island, I asked the provincial government representative who visited the Island on a regular basis to locate him. Even with the best efforts of the local residents, I was unable to locate the complainant.

In the end, I wrote to the Ministry "I notice (the complainant) had closed one of his letters to the Medical Plan with the words 'up your kilt with a wire brush'. I trust that this advice was not followed, and I am certain that your kind agreement . . . will improve your relationship with this gentleman". (CS 82-087)

Muzak not good enough

I reported in 1981 that I received complaints about the Medical Services Plan phone system. My complainants got no answer when they dialed the Ministry's toll-free number. In 1982, I received complaints from people who were unable to use the toll-free number and called long distance. They were put on "hold," thus incurring added expense, while listening to "Muzak".

When I raised these new concerns, the Ministry agreed to acquire equipment to evaluate the demand placed on the phone system. The equipment could record how many people were put on hold and for how long. This information would allow the Ministry to decide what steps to take to resolve this problem.

It is important that citizens are given the best-available access to essential services, such as their medical insurance. (CS 82-088)

[illegible]

I have spoken about the urgent need for an appeal mechanism for these cases.

Age limit reduced

Amniocentesis is a test performed on pregnant women to detect possible birth defects. About 100 congenital abnormalities, all incurable, such as Down's Syndrome and other forms of mental retardation can be detected. Because the risk of these defects increases with the mother's age, the test is often recommended to pregnant women who are not very young.

I received a complaint from a 36-year-old woman that the Medical Services Plan would not pay for this test. M.S.P.'s policy was to cover the cost of the test for women 38 years of age and older. The restriction applied to cases where the test was performed strictly on the basis of the mother's age. If there was previous genetic history which would lead her doctor to suspect possible birth defects, the age restriction did not apply. My investigation revealed that recent medical literature recommended the test be provided for women aged 35 and over. Although I was hesitant to enter the medical debate, it appeared that the Ministry explained its policy only on the basis of the cost to the Ministry if the age was lowered. The Plan covers "medically required" services. If the Plan refused to pay for the test of a 36-year-old woman, it would have to be on medical grounds and not simply financial.

The Minister of Health resolved this matter by announcing a change in policy. The age limit was reduced to 35 years at the time my complainant gave birth to her child. This policy now conforms with the recommendations of the medical community. (CS 82-089)

DENTAL CARE PLAN

In last year's Annual Report, I stated that although the Dental Plan was new, I had received few complaints about it. It appears that I will receive even fewer complaints this year, as the program has been cancelled.

A recommendation with teeth

A resident of Fort St. John, B.C. complained that the Dental Care Plan had rejected her claim for dental surgery completed in Saskatoon.

Because the complainant was able to obtain transportation to Saskatoon and could stay with family and friends, the dentist referred her to that city. The surgery was not available in Fort St. John. Edmonton and Vancouver were the closest centres. The Plan had rejected the claim because of a rule stating where a patient is referred out of the province, the patient must go to the nearest centre. Regulations covering the Dental Care Plan state that the patient must go to "the nearest convenient location".

The Ministry agreed with me that in these circumstances, Saskatoon was the nearest convenient centre for the complainant and paid her claim because she did not have accommodation or transportation costs in Saskatoon but would have had them in Edmonton or Vancouver. (CS 82-090)

HOSPITAL INSURANCE

The cost of a patient's stay in hospital is covered by the Hospital Insurance Plan under the Ministry of Health. Occasionally I receive complaints concerning eligibility for hospital coverage.

Despite appearances, she lives in B.C.

I received a complaint from a woman who was denied hospital benefits for an eight-day stay in a B.C. hospital. The administrator refused to pay the hospital claim, following an investigation which led him to believe the patient had given up her B.C. residence and, therefore, did not qualify for hospital benefits.

The complainant left Canada in February 1978 to visit her husband in Kenya. Her husband was assisting his father in a family business. The Ministry found that since her husband was employed in Kenya, the complainant had lost her B.C. residency. It pointed out that she had given up their apartment and had allowed her B.C. Medical Insurance to lapse.

The complainant, however, was able to supply me with information that demonstrated her intent to keep her B.C. residency. On considering her bank and insurance arrangements, the fact that she had stored her furniture in a home in Vancouver, and that she was able to provide a statutory declaration stating she intended to reside permanently in British Columbia, I concluded that she, indeed, intended to remain in British Columbia. Based on that information, the Ministry agreed that the complainant was a permanent resident of British Columbia and covered the cost of her hospital stay. (CS 82-091)

LONG TERM CARE

I have received several complaints involving the Long Term Care program. This program provides assessment and placement for senior citizens requiring care. It also licenses facilities to provide such care. I have been able to intervene on behalf of several senior citizens to ensure that the number of hours of care they receive is sufficient to meet their needs or to ensure that the standard of care provided by the facility is sufficient.

In addition, I have had complaints from homemaker agencies about their difficulties in obtaining homemaker contracts. In one case, the Ministry agreed to prepare a new arrangement that would allow public tendering of homemaker contracts.

Concerns met

Employees of an adult-care facility complained about the conditions for the patients in the institution. They complained about the lack of cleanliness of the facility, untrained staff, bad nutrition and the careless administration of comfort money.

I am unable to investigate the operations of a privately-run home and usually refer these complaints to the Ministry of Health. Facilities are licensed under the Community Care Licensing Facilities Board. The Ministry is responsible for inspecting the facilities to ensure that they maintain a high standard of care.

I requested that the Ministry's Long Term Care Program officials conduct an unannounced inspection. The Medical Health Officer and a local mental health social worker assisted in the inspection. The inspection answered several of the complainants' concerns. The building was old and was difficult to keep clean. The staff was sufficiently trained for the level of care provided. The money was properly administered.

As a result of the inspection, the owner agreed to replace an old carpet with linoleum. A Pharmacare consultant was asked to train the staff in the handling of medication, and a nutrition consultant was asked to provide advice about meals. (CS 82-092)

A family affair

A family dispute erupted when grandfather was moved to a new long-term care home. One side of the family complained to me that they were not asked about the move which they thought had been initiated by the other side of the family. In addition, the members of the family complained about the condition of the grandfather's former home and his medical condition while in that facility.

My investigation showed that the grandfather needed a higher level of care than was offered by the former home. A Long Term Care assessor had recommended that he move to a new home. I was able to ensure that both sides of the family were placed on the contact card at the new home. This meant that the entire family would be consulted about any decisions on the care of the grandfather.

I also made certain that an annual inspection was completed on the former home to meet the complainants' concerns about its condition. (CS 82-093)

Everyone gets a chance

A senior citizen wished to keep her homemaker, but the homemaker agency was not "recognized" by the Long Term Care Program, which meant that it would not cover the costs of the homemaker. This problem arose because the Vancouver Long Term Care Program had established "a closed list" of agencies with which they would deal. The new agency did not exist at the time the list was compiled. The agency said it was treated unfairly because it could not compete with the other agencies.

I asked the Ministry of Health, which is responsible for providing funds for the program, if it had considered the possibility of establishing a public tendering system. The Ministry agreed that every two to three years, a public tender is to be held to determine which agencies go on the list. Interested agencies will submit tenders identifying services they provide, cost of the service and service areas. This is to apply in centres such as Vancouver and Victoria.

This public tendering system will alleviate the hardship caused by the closed lists. (CS 82-094)

PUBLIC HEALTH

I continue to receive complaints about the Public Health Inspection Program. Often these concern problems with sewage disposal systems. Some complaints were about existing systems which were malfunctioning and in the complainants' opinion should not have been approved in the first place. Other complainants raised concerns about difficulties with enforcement of sewage disposal regulations. Public Health Inspectors are also responsible for inspecting lots included in subdivision plans to ensure the conditions are suitable for septic fields.

Lot with unique features

The owner of a new house who thought he had bought a large lot as an investment to help him in his retirement, discovered that the property was used as a dumping ground for raw sewage by his four neighbours. A sewage treatment plant had been installed in his backyard to treat the waste from all five houses. The new owner had not been made aware of this special feature on his new lot.

Following a two-year dispute with the neighbours, municipal government, the local health unit and the Ministry of Health, the complainant asked me to investigate. The system had been malfunctioning and had not been maintained for four years prior to the complainant's purchase. Soon after he had bought the property, raw sewage appeared in his backyard.

The Ministry of Health through the Medical Health Officer is responsible for ensuring that septic systems meet certain standards. The officer must issue a permit before construction begins and give his final approval of the system before it operates. The officer ensures that soil conditions and the size of the field are such that the system will not produce a health hazard in the future. It follows that the officer should ensure that sufficient information is available for him to make certain the systems meet the standards.

My investigation revealed that although the local health unit had received and studied a plan of the system, the usual details on soil conditions, and reports on site inspections were not in the file. Health officials could not produce evidence that the necessary inspections had been made. Later engineering studies showed that the field had not been constructed according to the plan. This should have been evident, had health officials inspected the field before the system went into operation.

Several resolutions were attempted. These involved the neighbours, the municipal council, the Ministry of Health and the Ministry of Municipal Affairs. All this time, raw sewage continued to surface in the man's backyard. Two years prior to my investigation, the Medical Health Officer had declared the area a health hazard. The local health unit had already tried to take the matter to court.

I suggested to the Ministry of Health that it accept part of the responsibility because its Medical Health Officers had not taken appropriate measures to ensure that inspections were completed and any potential health hazards eliminated. I suggested short-term solutions to clean up the mess and recommended that the Ministry contribute financially to the long-term solution and make sure that the standards are met if a new system is built.

Funding for the short-term clean up was provided by the Ministry of Municipal Affairs, and the field was pumped out on a regular basis but the Ministry of Health stated it had no legal authority to spend money for a long-term solution.

During my investigation, court action was initiated to stop the continuing health hazard. I requested that the Ministry be party to the legal proceedings. If a court found the Ministry partly responsible, it would, in my opinion, have sufficient legal authority to pay for the repairs.

I believed that the court might be able to resolve the problem, but I was concerned that the complainant might not be adequately represented. I was able to ensure that the complainant was given proper representation in court.

In December 1982, the Supreme Court of British Columbia found the original legal arrangements establishing the sewage system not sufficient to force the complainant to receive sewage from other households. As a result of the court decision, the Ministries and the local government are to continue their efforts to find a solution for the four other households. (CS 82-095)

Things go better with information

A man tried to subdivide his property. He complained that his plans had been held up because of last-minute requirements by the Ministry of Health. Because of this delay, he said, the subdivision could not be approved. Moreover, the delay was causing him financial hardship.

My office arranged with the Director of the Health District to review the man's problem and to specify what needed to be done to get the Health District's approval for the subdivision application.

After the review, the Health District specified the requirements. The Health District also agreed to complete its field inspection of the property in the spring, as soon as the snow had melted. The Ministry's direct approach to this complaint helped the man assess where his subdivision application stood with respect to obtaining the Health District's approval, and when he could sell the land for the money he badly needed.

Equally important, the Chief Public Health Inspector in the area took the problem one step further. He identified the information the Ministry of Health needed from the Highways Approving Officer in order to review and approve the subdivision application quickly. He prepared a list and discussed it with the Highways Approving Officer. The Approving Officer agreed that from now on he would collect this information before referring an application to the Health District for the Ministry's consideration. Because of this civil servant's initiative, subdivision applications in his area will probably be processed more quickly and smoothly. The applicant will know what information he must present to the Highways Approving Officer. The check list will ensure that all the necessary information has been gathered before the Ministry of Health is asked to approve the application. There will be no more avoidable delays because the Ministry will have all the information on which to base its decision.

The Ministry of Health has recommended the use of this list for other Health Districts. (CS 82-096)

VITAL STATISTICS

The Division of Vital Statistics administers various pieces of legislation that provide the framework for recording births, deaths, marriages, divorces, and changes of names. It is Vital Statistics that authorizes the legitimacy of children, issues marriage licences and decides if the names parents choose for their children are appropriate for official registration. Unfortunately, the legislation the Division must operate under has, in many cases, not changed with the times.

Principal offenders in this area are the *Name Act* and the *Vital Statistics Act*. In 1980, I reported that several provisions under these statutes are discriminatory, particularly toward women. At that time, the Ministry of Health agreed to bring the problems to the attention of the Legislation Review Committee. Nothing was done and I continued to receive complaints. For that reason, I raised the issue again in 1981, both directly with the Ministry and in my 1981 Annual Report. I was told possible legislative changes were still "under review."

In 1982, I was informed that there had been a change of direction. Rather than changing the legislation in a piecemeal fashion, the Ministry, in concert with Legislative Counsel and the Uniform Law Conference of Canada, is now working on a draft Act that could bring the legislation more in tune with today's concerns and possibly provide a model for other provinces in developing contemporary and uniform approaches to vital statistics administration.

While I commend the Ministry for taking this initiative, I am concerned that the [illegible] of the project will delay the needed [illegible] time. Until then, many individual [illegible] bians continue to be victims of [illegible] legislation.

I, therefore, urge the Minister and the Legislative Assembly once again to consider the [illegible]

Fortunately, [illegible] his discretion to [illegible] on individuals and [illegible]. The following [illegible]

Bureaucracy gone wild

Frustrated but resolute, a young woman came to my office for help. The untimely death of her common-law spouse, only months before their child was born, had been, to say the least, a major blow. To add to her burden, when she attempted to register the child's birth, she was told her husband could not be recorded as the father because he could not sign a form acknowledging paternity. She pointed out that his death made it impossible to meet such a condition. Further, she pointed out that other government agencies, including Canada Pension Plan, had formally acknowledged her husband as the son's father. Vital Statistics was sympathetic but unyielding. Determined that her son's birth be properly registered, she refused to complete the registration until her late husband was acknowledged as the child's father.

My staff discussed the woman's predicament with the Director of Vital Statistics. Based on this discussion, the Director agreed to reconsider the case if the woman could provide third-party information, establishing proof of paternity. Initially, this request appeared to be easily filled because she had already presented similar information to the Canada Pension Plan to establish the child's eligibility for her husband's pension benefits. She, therefore, asked Canada Pension to provide copies of the documents which it promised to do.

Few things are as simple as they appear at first. When more than a month had passed, and the documents had not arrived, my staff contacted Canada Pension stressing the urgent need for the information. To speed up the process, I asked that the documents be forwarded to me. They arrived soon after and were immediately delivered to Vital Statistics.

Meanwhile, to complicate an already vexatious situation even more, Family Allowance notified the mother it was not prepared to accept that the child had, in fact, been born. Apparently the officials reasoned that an unregistered birth is no birth at all and discontinued the family allowance cheque for her son. To add insult to injury, Family Allowance benefits for the woman's older child were also discontinued. The woman was informed that the suspension of payments for her older child would remain in effect until the allowance already paid on behalf of her recently-born son was recovered.

For a single mother on Income Assistance, this was a major financial disaster. The *Ombudsman Act* does not give me the authority to investigate federal agencies, but it seemed ludicrous that Canada Pension would recognize the child's birth, while Family Allowance would not, considering that both agencies are part of the same federal department. Benefits were eventually reinstated.

By this time, Vital Statistics had received all the requested information and documentation except one, the registration fee. In light of the situation, the Director agreed to waive the fee. The registration, with paternity now acknowledged, was completed the following day.

The successful resolution of the complainant's problem was gratifying. That as a direct result of my investigation, Vital Statistics substantially altered its procedures, added to my satisfaction. Now the Division will automatically consider third-party confirmation of paternity in situations where the father dies prior to the birth of the child. (CS 82-097)

The search goes on

A young man complained to me that the Director of Vital Statistics refused to issue him a copy of his original birth registration, a document he hoped would help him identify his natural father.

The *Vital Statistics Act*, the legislation governing release of confidential information, does not oblige the Director to release such information. If, however, the Director is convinced that the need for the information is essential, he may provide it. If he refuses, the applicant can ask the Minister of Health to review the decision.

The Director was not prepared to release a copy of the form but he agreed to review the registration to ascertain whether the natural father was identified on it. If so, the appellant could pursue the matter with the Minister, if not, he would know the information he needs is not held by Vital Statistics. He could then pursue his search elsewhere.

On review, the Director assured my staff that the birth registration in question does not record the name of the father. While disappointed that he had hit a "dead-end", the complainant was pleased that he had been spared the time and energy it might have taken to pursue the matter with the Minister. (CS 82-098)

What's in a name?

A single parent (who had been married previously) complained to me that she was having difficulties registering her son's birth. Shortly before the child's birth, the complainant moved to B.C. from Alberta and attempted to revert to her maiden name, but because she had not been a resident of B.C. for 12 full months she was told she could not do so. Before the 12 months had passed, she gave birth and attempted to register the child's surname in her maiden name. She was told this was not possible because Vital Statistics did not recognize her maiden name as her legal name. She decided to withhold registration until she could legally change her name.

When the 12 months had passed, she formally assumed her maiden name (through a change of name) and again attempted to register the birth. She was now told that the child's name could only be registered to reflect her surname at the time of his birth and then changed (through the change of name procedure). To further complicate the situation, she was told the child's name could not be changed without the consent of the father, who had not even acknowledged paternity.

I regarded the procedures used by Vital Statistics as unwieldy. In Alberta, for instance, the complainant (and all women married or divorced in that province) was free to assume her maiden name at will.

Vital Statistics finally agreed that since in Alberta there is no requirement for legal notice before a woman can revert to her maiden name after a divorce, it is reasonable to conclude that the complainant's name is and always was her maiden name, even in B.C. The child's name, therefore, could also reflect the maiden name and the legal name change was unneccessary. Vital Statistics agreed to refund the $25 fee for the name change and to register the child's name as chosen by his mother. Meanwhile, all District Registrars in B.C. have been notified that, henceforth, women who have been divorced in Alberta or Ontario (which has a provision similar to Alberta's) can legally use their maiden names, both in registering births and in applying for marriage licences. Not only did this resolve the individual complaint but it effected a change that will protect women against similar bureaucratic hassles. (CS 82-099)

Name change problems

A woman who had recently married, complained that her marriage licence incorrectly identified her change of name. The woman had been previously married and, at that time, had assumed her first husband's surname. Unfortunately, a Government Agent in collecting the necessary information for registration, asked the complainant for her maiden name. The resulting certificate did not identify the actual change of name and when she attempted to alter legal and financial documents to reflect her new name, she could not provide the necessary proof.

My staff discussed her dilemma with the Director of Vital Statistics who agreed to amend the registration to record the appropriate name change at no charge to the complainant. (CS 82-100)

PERSONNEL

I also received complaints about personnel issues within the Ministry. Two examples involved community nurses.

Negative comments removed

A woman had worked as a Community Nurse with the Ministry of Health for several years. After she handed in her resignation, the employer conducted a termination evaluation that contained negative statements about her. She grieved this evaluation and won her grievance. The Ministry had to remove the damaging documents from its files.

More than a year later, it came to her attention that her personnel file still contained negative information about her. She complained about this to my office.

My investigation revealed that the Ministry had, indeed, removed the offensive evaluation from the complainant's record. However, documentation surrounding her grievance was still on file. Also, the Ministry had placed in the personnel file a document called "separation report" in which it repeated the negative information contained in the termination evaluation.

I suggested to the Ministry that it remove from the complainant's file all correspondence relating to the complainant's grievance about the termination evaluation, and that it also remove the separation report. The Ministry complied with my recommendation. (CS 82-101)

Her fault, too

A Community Nurse started to work for the Ministry of Health on a part-time basis in 1974. She recorded the hours she worked every day and claimed wages for the actual hours worked. Not until five years later, did she find out that by law she was entitled to a minimum pay of four hours every time she was called in to work. From 1979 on, she claimed and received the correct pay.

After she became aware of the error, she filed a grievance but then missed the time limitation to continue the grievance at the next level. She then came to me and asked for help.

My staff looked at the relevant legislation and found that the nurse could have filed a complaint under the *Payment of Wages Act*. She would have had to file this complaint within six months of an alleged violation. Had she done so, she might have been entitled to back pay for six months, consisting of the difference between the pay she actually received and the pay she was entitled to. Although she had not complained under that

Act, I recommended to the Ministry of Health that she receive an amount equivalent to what she would have received had she complained under that Act.

The Ministry complied with my recommendation and paid her $160.81. This amount was much less than the amount by which the complainant had been underpaid over the years but it was my opinion that the complainant had contributed to the error. She should have familiarized herself at an earlier date with the provisions applying to her job. (CS 82-102)

BOARDS AND COMMISSIONS

The Ministry of Health is also responsible for several boards and commissions. I may investigate boards or commissions, if the majority of the membership is appointed by the Minister or by the Lieutenant Governor in Council.

Unfair procedures changed

A man who had recently failed an examination to qualify as a Dental Technician complained that the Board refused to tell him why he had failed. He also felt that several procedures used in the testing process were unfair, including selection of clients, and persons who marked the results.

After investigation, I agreed that the procedures used by the Board, specifically in marking the practical examination, were arbitrary. I was particularly concerned that there was only one examiner who did not even record the way he or she arrived at an examination score. I also felt that the Board should provide unsuccessful candidates with information on their areas of weakness, thus giving them an opportunity for improvement for future exams.

After lengthy discussions the Board admitted that its procedures were potentially unfair and agreed to modify its approach to examinations substantially. (CS 82-103)

HOLDING PUBLIC OFFICIALS TO THEIR COMMITMENT

In my 1980 Annual Report I referred briefly to the case summarized below. I had outlined the problem as follows (p.13):

"A Cabinet Minister signed a letter making a commitment for financial support of a non-profit organization. The Ministry later reneged on the commitment and when questioned by the Ombudsman, used the following excuse: all such commitments are, of course, subject to funding in the budget; since the Ministry did not ask for or get such funds, it is not bound by the Minister's letter of commitment. I believe that written commitments made by a Minister do indeed commit the Ministry."

I made the following general comment about keeping official commitments (p. 13-14):

"As Ombudsman, I must do my utmost to hold public officials to their commitments so that the government's word is not devalued and debased in the eyes of the citizen. The government expects, and will enforce when necessary, the citizen's compliance with the law. Voluntary compliance depends to a considerable degree on the citizen's perceiving that those in power and office also comply with the law, and honour official commitments. There are, of course, legally enforceable contracts. The commitments I have in mind here are either not formal contracts or are too cumbersome or too costly to enforce through the legal process. Should a government agency or official have to withdraw from a commitment for a valid reason, the agency should explain its dilemma and seek a new arrangement with the consent of the persons affected. That is the only honourable way out of a commitment."

The case described below did not see a satisfactory conclusion. I must therefore bring it to the attention of the Legislative Assembly. Members and Cabinet Ministers might also find it of interest because it appears that Ministry officials carelessly neglected or consciously undermined the implementation of a Minister's honest and firm commitment to a citizens' group.

The commitment

In 1980 I received a complaint from the Program Director for the Gillain Foundation about the Ministry of Health: the Ministry of Health had failed to honour the Honourable Rafe Mair's commitment to the Foundation. Specifically, the Director stated that the Ministry had failed to honour its Minister's commitment to reimburse Gillain Manor for British Columbia residents attending the facility who were referred to the Manor by the professional staff of the Alcohol and Drug Commission. Such referrals were to be made if no empty bed was available within the Commission's residential treatment centres, or if, for some other reason, it was appropriate for the patient to be referred to Gillain Manor. The Minister made this commitment when he met with Foundation representatives in December 1979, and he confirmed the commitment in writing in January 1980.

The Director of Gillain Manor maintained that the Ministry of Health had not established a patient referral mechanism for Gillain Manor, the Foundation's treatment centre. Since the Manor had not received any referrals from the Alcohol and Drug Commission, the Foundation had not received any funds. The Director held that the Foundation had attempted to remedy this problem and had failed. Moreover, he stated that doctors, counsellors, and prospective patients who attempted to refer or be referred to Gillain Manor were met with responses from the Ministry representatives which varied from a denial of any knowledge of the Minister's commitment, to the statement that referrals would not be made to the Manor under any circumstances.

Gillain Manor was a treatment centre for people suffering from alcohol addiction. The Manor was established by a private organization without the need for approval by the Alcohol and Drug Commission or the Ministry of Health. It was set up as a commercial profit-making enterprise for the treatment of executive alcoholics. Its surroundings and services reflected that aim. Gillain Manor Ltd. was a subsidiary of Abacus Cities Limited. When that company could no longer run the Manor, a group of citizens formed the Gillain Foundation with a view to maintaining what they considered to be an important treatment centre. In September 1979, the Foundation, constituted under the *Societies Act*, assumed responsibility for the Manor.

The Foundation's Board of Directors wrote to the Ministers of Health and Finance in December, 1979, and requested financial assistance. Representatives of the Foundation submitted this request in person during a meeting with the Minister of Health, the Minister of Finance, the Provincial Secretary, and the Deputy Minister of Health. They discussed the Manor's need for government assistance, and on December 31, 1979, the Director wrote to the Minister of Health to say that the Foundation representatives were encouraged by the decision to provide a per diem rate for British Columbia residents treated at Gillain, and asked for an official confirmation, as well as a working out of details.

On January 2, 1980, the Minister of Health responded with a letter of commitment confirming that decision.

Between January and July, 1980, the Foundation's staff made efforts to have the Ministry of Health, and more specifically, the Alcohol and Drug Commission honour this commitment. When these efforts failed, the Director complained to my office on behalf of the Foundation.

During the investigation of this complaint, the Ministry of Health asserted that the commitment made to the Foundation was subject to the availability of funds. The Ministry suggested that this condition is always implied in any commitment a government agency makes. However, the Ministry had failed to state this condition specifically at the time the commitment was made, and did not mention this condition until after the Foundation raised the problem that the Alcohol and Drug Commission was not referring patients to Gillain Manor in March, 1980. In April, 1980, a Ministry official indicated to the Director that a problem existed because the Commission's budget did not include funds for the Manor.

After investigation, I found the Foundation's complaint substantiated. I agreed that the Ministry had failed to honour the Minister's commitment. If the commitment had been subject to funding, the Minister should have stated this condition clearly in his initial letter of commitment on January 2, 1980. At the time of the meeting in December 1979, government representatives were aware that the Foundation needed funds. The Director maintained that the Foundation representatives would have reacted to and clarified such a condition because they were well aware that the Foundation needed financial assistance in order to remain open. In other words, this condition would not have gone unnoticed.

I concluded that the Ministry should implement its agreement with the Gillain Foundation. The Foundation, as indeed any member of the public, is entitled to rely on a commitment made by a government representative or government agency. I consider it the duty of government officials to be direct and clear in their dealings with the public. I found that they have not discharged this duty in this case. I found that the Ministry had not implemented the patient referral mechanism mentioned in the Minister's letter of commitment, and I informed the Ministry that it was my opinion its actions in dealing with Gillain Foundation were unjust and its failure to refer patients was improper.

The Deputy Minister of Health informed me that the Cabinet had considered the matter and reluctantly made a firm decision not to provide funds for the operation of the Manor. The Deputy Minister pointed out that the agreement with the Foundation had lapsed, and therefore, the Ministry could not implement my recommendation.

Gillain Foundation wound up its affairs and closed the treatment centre on December 31, 1980.

I do not consider the Ministry's responses to my recommendation either adequate or appropriate. (CS 82-104)

MINISTRY OF HUMAN RESOURCES

[redacted]

[redacted]

Location should not determine need

I received a complaint from a long-time resident of one of the Gulf Islands. He had lost his job and asked the Ministry for financial assistance. He was told he was not eligible for benefits because the Ministry considered the island a "designated area". Residents in such designated areas don't qualify for financial assistance on the grounds that no employment is available in the vicinity. The presumption was that the Ministry wanted him to move to a non-designated area. The complainant felt this was unfair, particularly because he had easy daily access to a major centre where work was available, and his family home which was relatively inexpensive was on the island. Moving would, therefore, mean uprooting his children and obtaining more expensive accommodation. My staff contacted the Ministry, explained the complainant's problem, and the Ministry agreed to grant assistance on the basis of "extenuating circumstances". This resolved the complaint for the individual but I remained concerned about the general practice of "designating". It appeared to me that the *G.A.I.N. Act* (the legislation that provides the rules for granting income assistance) demands that each individual's application be viewed on its own merits. By developing a general policy that determined eligibility on the basis of geographic location, it appeared that individual assessment (the very basis of the legislation) was being regulated out of existence.

I brought my concerns to the attention of the Ministry which, after more than a year of reviewing the matter, decided to eliminate the practice of "designating". (CS 82-105)

No chauvinism, please

A woman who had applied for income assistance for herself and her family complained that Human Resources insisted the application be taken from her husband rather than her. She felt this was improperly discriminatory, particularly considering that she and her husband were equally responsible for providing for the family's needs.

I contacted the local Ministry supervisor. She explained that the male partner normally completed the necessary paperwork, because it was "administratively convenient". When asked to identify specific instances that would illustrate the "conveniences", the official could give no persuasive examples. I asked that she reconsider this practice which she agreed to do. A short time later, she reported that she had raised the issue with other supervisors in her area.

They agreed that the "principal wage earner" would be asked to complete the application. The "principal wage earner" would normally be the person in the family who provides the major financial support. If both members feel they contribute equally, either can apply.

Using this approach the Ministry will know that the applicant is familiar with the family's financial situation. At the same time, the Ministry does not automatically assume that the male is necessarily the family's provider. (CS 82-106)

Regarding complaints that raise individual concerns, Ministry staff deserve to be commended for their co-operative, problem-solving approach. If I were to award a "gold star" to the authority that has been most receptive to resolving individual dilemmas, Human Resources would be a strong contender.

With many income assistance complaints, the problem is urgent and consequently the individual is upset. While the Ministry has not caused the problem and is, therefore, not necessarily obligated to solve it, I attempt to work with the Ministry to find a solution that will meet both the Ministry's need to administer its programs properly and the complainant's need for help.

Heat is part of shelter

A single parent who was receiving financial assistance complained that Human Resources refused to assist her with the costs of heating her trailer and asked for my help. The woman had purchased a trailer which she later found did not have a functioning heating system. She had made numerous attempts to resolve her problem through consumer complaint channels but without success. With winter approaching, she asked Human Resources to help but her request was refused, apparently on the grounds that she had funds in a term deposit to meet her need. The woman said she had already tried to withdraw the money, but the bank had told her she could not do so.

My staff contacted the bank manager to find out why the money was unavailable. The manager explained that the funds were not in a term deposit, but had been converted to an investment certificate which was definitely not redeemable until maturity, nearly a year away. She further explained that the woman had attempted to borrow the needed money, using the certificate as collateral, but that her application had been denied because the bank felt her income was too low even to meet the interest payments on $800.

I then contacted Human Resources and pointed out that the woman was receiving less than maximum shelter benefits. I asked whether the Ministry was prepared to consider her loan payments as an additional shelter cost. After some consideration, the Ministry agreed to my proposal on the grounds that heat is a basic component of shelter. My staff then contacted the bank again and explained that if the loan were granted, her income would increase sufficiently to meet the payments. The bank agreed to reconsider the application, and the loan was approved soon after. (CS 82-107)

Work now, pay later

A lawyer contacted me on behalf of a client who had a long outstanding debt to a local creditor and had made no attempt for more than a year to pay the bill, despite a court order to do so. As a result the client faced an immediate deadline: either pay within 24 hours, or a warrant for her arrest would be issued. Her only source of funds was the Ministry of Human Resources. She asked the Ministry to pay the bill. The Ministry refused. She felt this was unreasonable and pointed out that the costs resulting from her incarceration, including those incurred by the Ministry in caring for her children, would far exceed the outstanding debt.

My staff sought out the Ministry's position; the woman had experienced ongoing problems paying her bills and the Ministry had in the past "bailed her out". This time Ministry officials felt she should take the responsibility for her debt.

I could understand the Ministry's position. It would be unreasonable to expect the Ministry to take unlimited responsibility for a client's debts. On the other hand, incarceration seemed to me too harsh a consequence, particularly in view of the disruption it would mean for the children.

I proposed a compromise. The Ministry has a special program assisting clients in gaining necessary job skills. By participating in this program, a client can earn $100 a month for a limited time without reduction to other benefits. I suggested that the Ministry place this woman in such a program, enabling her to pay her debt. The Ministry agreed but was reluctant to give her the money before she had earned it.

Further discussions between the Ministry, the lawyer, the client, and the creditor ensued, and an agreement was reached. The woman would start work immediately. If she completed one week's work, the Ministry would advance the needed money by paying the creditor directly. She would then continue working until the debt had been repaid. On the strength of this agreement, the creditor agreed to withhold further action for one week. (CS 82-108)

[redacted]

Ministry can't have it both ways

A single mother complained that the Ministry of Human Resources was unreasonably asking her to repay income assistance she had received.

My staff found that when the woman had applied for assistance, she agreed to a repayment provision because she was anticipating a lump sum maintenance payment that would cover the same period in which she received assistance. However, when the payment came through, she had no other source of income and was not eligible for income assistance because she had received the money. Therefore, she used the money she had received for normal living expenses.

She was in what appeared to me to be a "catch-22" situation. She was expected to use the maintenance to repay monies received and live on the same money.

My staff explained the complainant's predicament to the Ministry. The Ministry subsequently decided to waive the request for repayment, relieving the complainant of a debt she could not repay. (CS 82-109)

Lost in red tape

A single mother complained that somewhere between the federal Assisted Home Ownership Housing Program and the Ministry of Human Resources' Income Assistance Program, she was not receiving the benefits she was entitled to.

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Briefly, the woman had entered into an agreement whereby she received a fixed amount of money each month from a federal housing program to assist her in meeting her shelter costs. She also received assistance from Human Resources which deducted from the benefits it gave, the amount given by the federal government. She was thus neither further ahead nor further behind by receiving the federal benefit. However, she later discovered that the federal benefit was not a grant but was, in part, a loan. She was then asked to repay the loan portion. She felt that the only one directly benefitting from the loan was Human Resources. Therefore, the Ministry should repay the amount in question.

To complicate the situation further, she was then given monthly benefits from A.H.O.P., this time as grants only. She was expected to pay back the loan from one pocket while receiving a grant in another. The grant, however, continued to be deducted from the Human Resources' benefits, leaving her no further ahead. In fact, she was now $5,000 in debt, the amount of the outstanding loan.

The woman had to assume some responsibility for her predicament. She had entered into a contract with A.H.O.P. without understanding or questioning it. I, therefore, asked the Ministry to exempt the current grant, allowing her to apply that money to the outstanding debt. The Ministry agreed to exempt only the amount required to pay the loan, an amount slightly lower than the total grant. This was not precisely what I had in mind but it significantly alleviated the woman's problem. (CS 82-110)

An $85 raise

A woman called my office saying that she had difficulty supporting herself and her granddaughter on the amount of income assistance she received from the Ministry of Human Resources. She wondered whether there was a more appropriate classification for her granddaughter so that she could receive more income assistance from the Ministry. Her granddaughter is mentally handicapped.

At the time she called, the woman received an old-age security pension, a Ministry of Human Resources supplement, and a fixed amount for her granddaughter, whom the Ministry had classified as "a child in the home of a relative", bringing her total monthly income to $714.17.

My office reviewed the Ministry's income assistance schemes and discovered that if the Ministry dropped the special classification for the woman's grandchild and considered the two as a two-unit family where one person receives an old-age security pension, the total income would be $800 a month.

The Ministry agreed to reclassify the family, and the woman received an additional $85.83 a month. With this increase, the woman felt she could adequately support her granddaughter and herself. (CS 82-111)

Interest unfair

A single parent complained that the Ministry had not only asked her to repay benefits she received prior to her separation agreement, it had also charged her interest on the amount. She agreed to repay because her settlement included retroactive payments for the period in question, but felt that asking for interest was unfair.

My staff asked the Ministry for a detailed breakdown of the outstanding amount. This breakdown, which included no provision for interest, was shared with the complainant. She disputed approximately $650 of the breakdown, reporting that she had not received the cheques in question.

I brought this discrepancy to the attention of the Ministry. After reviewing the records, the Ministry found that the complainant was correct and adjusted its records accordingly. The outstanding amount was substantially reduced. (CS 82-112)

Woman allowed to buy car

A single parent, studying to be a nurse while on income assistance, was granted a student loan from the Ministry of Education to meet her educational expenses. She wanted to spend part of that amount on a second-hand car to provide her with transportation to the school, some 40 miles from her home. The Ministry of Human Resources questioned the necessity of the car. The complainant felt this was unfair. She maintained that the loan was to help meet her education expenses and she viewed the car as a legitimate expense.

My staff found that the two Ministries had an understanding that if Education meets the cost associated with training (tuition, books, travel, etc), Human Resources will continue to provide living expenses to designated recipients. The grant the complainant received fell within that agreement. It seemed reasonable to me that as long as the woman met her educational expenses, she should not be precluded from purchasing a car.

The Ministry agreed, exempting the full loan from deduction. (CS 82-113)

[redacted]

Three months backpay

A woman complained that she had applied for handicapped persons income assistance in January and had heard nothing from the Ministry by the end of May.

My staff found that the Health Care Division (the part of Ministry of Human Resources that makes decisions on H.P.I.A. applications) had reviewed her application soon after it arrived but had then written to her physician, asking for clarification of her medical condition. The physician had not responded.

My investigator explained to the physician the urgent need for his response; he agreed to contact the Division immediately. When several weeks passed and his response had not yet arrived, I tried to reach him but he was away on holiday. I suggested that the woman explain her predicament to her family physician for his assistance in providing the information, possibly from another source. She did this, the information was forwarded to the Health Care Division soon after, and her application was approved effective June Ist.

With the immediate problem resolved, I would ordinarily have closed my investigation but it seemed to me that while the delay was to some extent beyond the Ministry's control, it had some responsibility to follow through on its letter to the physician. Had it done so, the delay might not have been as long. I raised this concern with the Director of the Division, suggesting that the application may have been delayed by about 3 months. The Director agreed and the complainant received a catch-up cheque. (CS 82-114)

[redacted]

Not Pharmacare's fault

A drug store owner complained that he had misplaced some valuable Pharmacare vouchers. When the vouchers were located some six to eight months later, he submitted them, but Pharmacare refused to pay. He considered this unfair, particularly as they had been misplaced through no fault of his own.

My staff found that Pharmacare "stale-dates" its vouchers after six months (refuses to honour them as valid claims). "Stale-dating" is used because after six months, the information necessary to certify the validity of the claims is placed in storage. This storage procedure is necessary due to the high volume of vouchers processed and the limited storage capacity of Pharmacare's computer system. The administrative costs of retrieving the stored information was estimated at approximately $8,000.

Pharmacare could not be faulted for the owner's failure to submit the vouchers in time and it was unreasonable to suggest that Pharmacare incur such a large expense to process the claims. I did not substantiate the complaint. (CS 82-115)

[redacted]

whelmed by the Ministry's authority to investigate abuse complaints and to apprehend a child when the Ministry determines the child is "at risk". Parents often call my office wanting information about the Ministry's authority and investigative procedures.

Grandmother concerned

A woman called my office, concerned that the Ministry had apprehended her grandson without completing its investigation into a child abuse allegation. Apparently, her grandson had a broken arm and nobody in the family could explain how it happened. The Ministry, concerned for the child's welfare, apprehended the child and reported to court. At the report to court stage, the Ministry had not completed its investigation, and the judge agreed that the boy should be placed with his grandparents until the investigation was concluded, and the court had an opportunity to hear the whole matter.

The woman thought it was unreasonable for the Ministry to apprehend her grandson without completing its investigation. She thought the Ministry had been trigger-happy. To her, separating mother and child was a drastic step, one which should only be taken if the Ministry had hard evidence of abuse.

My staff gave the woman information about patterns of abuse and possible reasons for the Ministry's action. Essentially, the Ministry chose to be safe rather than sorry. My staff pointed out that the Ministry must assess whether the child is at risk, even though all the relevant information has not been collected. In reporting the matter to court, which the Ministry must do, once it apprehends a child, a judge agreed there was enough information for concern to warrant placing the child with his grandmother for the time being. (CS 82-116)

Parents also call me for information about the Ministry's investigative procedure in cases of child abuse allegations. They want to know what is happening to them and they want to protect their families. Without this information parents feel very vulnerable.

Not an ultimatum

A very angry woman called my office, complaining that the Ministry had investigated an allegation that she neglected her son. She suspected her former husband made the complaint. She resented being unable to confront the complainer. She also resented the social worker's questions about her family life and past marital problems. And finally, she resented the social worker's recommendation that her son attend a child development centre. She wanted to know what would happen if she declined to follow the social worker's recommendation. She wanted to know what her rights were so she could be better prepared if there was a next time.

My staff gave the woman the information she wanted and confirmed with the Ministry that the social worker's recommendation was, indeed, a recommendation and not an ultimatum. Since the Ministry had concluded that the neglect allegation was "unfounded", the complainant also wanted an assurance that her name would not go on the Central Registry of Protection Reports. I obtained this assurance for her. (CS 82-117)

This complaint illustrates that many people are not familiar with the Registry, the investigation process, and all that goes with it. There is a lack of written information from the Ministry to people who are caught up in investigations on child abuse. For those who are wrongly accused of abusing their children, it must be a very disconcerting experience to be confronted with the allegation. People rarely like to discuss personal family matters, particularly with strangers—even though they may be representatives of the Ministry. Parents often deny that there is a problem in the family and they are amazed that the Ministry proceeds with protection action on a child's statement. Parents expect the Ministry to have irrefutable evidence before it takes protection action. Parents are surprised at the weight the Ministry gives a child's statement.

In my view there is a great need for the Ministry to inform parents about its authority, procedures, and potential action under the *Family and Child Service Act*. This information should be available in written form. Verbal information at the time the Ministry is taking protective actions, is not effective communication.

By providing this information in writing, the Ministry can avoid a lot of confusion about its role in family matters.

Preventing sexual abuse

A woman complained because the Ministry had just apprehended her daughter. The Ministry had received an allegation that the girl's stepfather had sexually abused her. The woman suspected that her daughter had made up the story because she was angry at her stepfather. My investigator informed the woman that children below a certain age rarely lie about sexual abuse, and explained to her the Ministry's role in protecting children and removing them from potentially harmful situations. The woman began to understand why it was so important for her to believe her daughter and not allow her to be exposed to potential abuse. As long as she believed there was a strong possibility that her daughter wasn't telling the truth, she could not protect her daughter from potential abuse, and the girl would probably continue to remain in a foster home for protection. Once my office gave the woman information about sexual abuse, the Ministry's authority, and what the Ministry expected of her, she was able to come to terms with the allegations and make decisions that would help her daughter. (CS 82-118)

ADOPTION

In the area of adoptions, people often want to know why the Ministry did not accept their adoption application. Adoption is a long process, accompanied by a lot of hoping and planning. When the Ministry finally says "no", people are often disappointed and angry. Then, they come to me to find out why their application has been turned down.

Adoption on "hold"

One family complained that the Ministry had rejected their adoption application. They felt that the Ministry had not given them straight answers about the Ministry's reasons for its decision. But instead of giving a definite no, the Ministry had decided to put their adoption application on "hold" until certain conditions were met. The Ministry's flexibility in this case confused matters rather than clarified them.

My investigator looked into the matter and found that the Ministry, after doing a home study, had some concerns about the family life the new child would become part of, as well as the delayed development of one family member. The Ministry asked the family to seek counselling with the understanding that the counsellor would send a report to the Ministry. If the Ministry's concerns turned out to be unfounded, it would be prepared to consider the family's adoption application again. For this reason, the adoption application was on "hold" for approximately one year.

My staff reviewed the information the Ministry had to support its concerns and agreed that the Ministry's proposed plan of action was a reasonable one. My investigator spent time discussing the matter with the family to help them accept the Ministry's decision. (CS 82-119)

Sometimes, people call me because something has gone wrong and they fear that their adoption application is in jeopardy.

Objectivity assured

A man called my office because he had learned that the Ministry received an allegation that he and his wife had a violent relationship. The couple had submitted an adoption application to the Ministry approximately a year ago. The husband now feared that the Ministry would not go ahead with a study of his home because of the allegation. He wanted an opportunity to refute the allegation as well as some assurance that the Ministry would do the home study. Moreover, he wanted a social worker, other than the one who confronted him with the allegation, to do the home study. He felt the first social worker had assumed that the allegation was correct and would not be in a position to assess his family objectively. The Ministry's Regional Manager addressed the man's complaint effectively. He agreed to deal with the allegation during the home study, at which time the man would be able to address the allegation. In the end, the Ministry would inform him about its position with regard to the allegation and whether or not the allegation jeopardized his family's adoption application. The Regional Manager understood the man's need for assurance that the matter would be dealt with objectively and agreed to assign a different social worker to do the home study. (CS 82-120)

FOSTERING

I receive a few complaints from foster parents. Fostering is a difficult responsibility. It takes a lot of love and care to be a foster parent to children in the Ministry's custody. Foster parents are an important resource for the Ministry as well as for children in its care. From time to time, my office will get a call from a foster parent, usually when the Ministry has decided to move a child or close a foster home. The foster parent then wants information about the Ministry's review mechanism for this kind of decision. The review mechanism is much like the one the Ministry uses for other decisions in areas of social work. Foster parents are asked to discuss their problems with a social worker in the hope that the problem can be resolved at the local level. Failing that, the matter is considered by the social worker's District Supervisor. If the District Supervisor cannot propose a resolution which is satisfactory to both the Ministry and the foster parents, the latter may take the issue to the Regional Manager. If the problem remains unresolved at this stage, the foster parents can turn to the B.C. Federation of Foster Parent Associations for assistance. The Federation will ask the Regional Manager to call a meeting of all people concerned to review the matter.

If the Regional Manager's decision continues to be unacceptable to the foster parents, the foster parents may request the Federation office to pursue the matter by going to the Superintendent of Family and Children's Services. Normally they do not ask for my assistance along the way, but I am usually their last resort.

Chance to be heard

Recently a woman who fostered several children called me because one child had made an allegation of sexual abuse. She said she had exhausted all avenues and the Federation supported her in bringing her concern to me. The foster child had alleged that the woman's husband had fondled her. The foster mother was very concerned about the child's allegation as well as the effect it might have on the other children and on her status as a foster parent. The Ministry had investigated the abuse allegation and had decided to remove the foster children because there was some doubt. The woman felt the Ministry had not fully investigated the matter and, therefore, its decision was unreasonable.

The Ministry agreed to reopen the investigation and asked the foster parents to submit names of people they thought were relevant to the abuse allegation—people they would want the Ministry to interview. Although this matter has not yet been resolved, the foster parents were grateful that the Ministry would at least listen to them before deciding whether or not to remove the remaining foster children. (CS 82-121)

This woman's complaint demonstrates how vulnerable foster parents can be. If the child had been her own, the Ministry would have had the option of apprehending the child and the parents would have faced the problem in family court. Since the child is not a family member, she was simply removed from the home. Moreover, her allegation affects not only her life but also the lives of the other foster children in the family. Given some foster children's troubled state of mind when they are placed in a foster home, this woman wondered how foster parents can protect themselves against [illegible] or manipulative children. She thought the Ministry should balance her rights as a foster parent with those of the children and that each should be given due consideration.

There is a need for the Ministry to [illegible] procedures clearly when a problem such as this arises. In devising these procedures, the Ministry must ensure that everyone involved is treated with fairness.

At times I get [illegible]

S[illegible] child [illegible]

Girl finds new home

A girl called my office after she had left home. Her father had assaulted her and she did not want to live at home any longer. She went to the home of her boyfriend's grandmother who was willing to care for her. The grandmother, however, was on a fixed income and could not afford to support the girl indefinitely.

The girl told my investigator that the Ministry was not willing to give her financial assistance. The Ministry told her to take action against her parents for maintenance under the *Family Relations Act*. Since this court action would take some time, she was in a bind. She worked part-time at a restaurant and could support herself during the summer but she planned to return to school that September. She complained that the Ministry had unreasonably denied her financial assistance and she was unsure of her future. My investigator determined that the Ministry had tried to get maintenance for the girl from the parents but the parents refused to pay the amount of maintenance the Ministry suggested. Since her parents did not have any objections to the girl living at the grandmother's, the Ministry suggested the grandmother apply to have her home approved as a "restricted" foster home. This simply meant that the home could be approved as a foster home for this girl only. At the same time, the Ministry was prepared to sign a short-term custody agreement with the girl's parents, enabling the Ministry to pay for her room and board if she lived in an approved home. I considered the Ministry's solution to the problem reasonable. Whenever teenagers or concerned adults call my office with a similar problem now, I set this complaint as an example for them to follow. (CS 82-122)

DAYCARE

[illegible]

Woman gets her pay

A man complained that the Ministry of Human Resources would not pay his wife, Mrs. C., for day care services she had given another woman, Mrs. B. Mrs. B. was on income assistance and received day care services through the Ministry of Human Resources for her two children. Mrs. C. provided this service for three months.

The usual agreement between the Ministry and the day care recipient is for the Ministry to pay the day care recipient directly. In turn, the day care recipient contracts with the day care provider and is responsible for the payment of the service. In this case, Mrs. B. contracted with Mrs. C. for day care services, but failed to follow through with the payment.

The Ministry informed Mrs. C. that it could do nothing to remedy the problem. The Ministry thought the resolution of the matter lay with Mrs. B. and with Mrs. C. If Mrs. C. was unable to resolve the problem, she would have to take Mrs. B. to Small Claims Court for payment of the services.

The man who called me did not consider the Ministry's approach reasonable because he and his wife had already tried to resolve the matter with Mrs. B. and had failed. Moreover, if Mrs. C. took the matter to Small Claims Court, she thought her chances of retrieving the money were nil because Mrs. B. appeared to have no assets.

Since the Ministry had, in effect, paid for the day care services, and Mrs. B. had wrongfully kept the money, the man thought the Ministry should be able to deduct the money from Mrs. B.'s income assistance and pay his wife.

The Ministry agreed. It established that Mrs. B. had, in fact, received the money for day care services but had failed to pay Mrs.C. The Ministry concluded that it had overpaid Mrs. B. and deducted the amount of the overpayment from Mrs. B.'s income assistance. The Ministry paid Mrs. C. in full for her day care services. (CS 82-123)

[illegible]

MINISTRY OF LABOUR

[illegible]

[illegible]

The cat in the snow

I received a complaint via the Saskatchewan Ombudsman that a former B.C. resident was dissatisfied with the efforts of the Employment Standards Branch to collect wages a previous employer in B.C. owed him.

My investigation showed that the Branch tried to recover the money but the defaulting employer claimed to have no funds or other resources to meet his obligations. Inquiries with local financial institutions and other businesses substantiated the employer's plea of poverty. He did, however, own a DC-8 Caterpillar machine, the sale of which might generate enough money to pay the complainant's wages. Unfortunately, by the time the Sheriff was able to locate the cat, winter had set in, and the machine was sitting in a field under many feet of snow.

The machine was sold in spring and I was able to report to the Saskatchewan Ombudsman and the complainant that a cheque was in the mail. (CS 82-124)

EMPLOYMENT STANDARDS BOARD

The Employment [illegible] ap-peals against decisions of the [illegible] ards Branch. One [illegible] within which the Board can [illegible] decisions.

Both sides now

An elderly man had worked near Wells, B.C. but was now living in the Lower Mainland where he received treatment for a number of illnesses. He had asked the Employment Standards Branch to assist him in claiming wages he believed were owed to him by his former employer. The Branch investigated his claim and concluded that the wages were owing. The employer, however, contested this decision and requested a hearing before the Employment Standards Board. The Board arranged to hear the dispute in Fort Nelson, where the employer's offices are located.

The complainant's multiple and chronic illnesses plus his limited financial means precluded him from attending the hearing in that far northern community but unless he could attend the hearing, he feared he would never be able to collect his money.

After I intervened, the Board agreed that its decision to hold the hearing in Fort Nelson was oppressive to the complainant and suggested that the hearing be held in Prince George, where adequate medical and transportation facilities were available. At the hearing, the complainant's wage claim was upheld.

Shortly after, the employer complained to me during my visit to Fort Nelson about the manner in which the Employment Standards Board had conducted the hearing.

After reviewing the matter, I concluded that all parties were given an opportunity to present evidence and to cross-examine testimony at the hearing. I could not substantiate this complaint. I pointed out that if the employer disagreed with the decision made by the Employment Standards Board, he had further recourse to the Court of Appeal. (CS 82-125)

All that evidence and nowhere to go

An employer disputed a wage claim and the matter went to a hearing before the Employment Standards Board, which ruled that no employee-employer relationship existed in this case. The employee's claim against the employer for more than $2,000 was rejected. The employee then complained to me about the hearing conducted by the Employment Standards Board.

Evidence presented at the hearing included testimony from the firm's receptionist that the complainant did not have assigned duties, and that she did not attend that place of business regularly. It was asserted that the complainant was only there from time to time through an arrangement with the employer whereby she was furthering her studies in business administration. Company officials testified that the complainant had not acted as a purchasing agent, and had not signed purchase orders as she had claimed. The company claimed it did not even use purchase orders. All purchases, officials said, were made verbally by the receptionist. The Industrial Relations Officer handling the case on behalf of the complainant said the testimony of the receptionist was critical in defeating this claim.

My investigator contacted several ex-employees of the firm in question who said the complainant appeared regularly at the office and performed specific functions, including that of purchasing agent. There was also evidence that purchase orders were used by the firm. My investigator even obtained a copy of a purchase order made to an Ontario firm, clearly bearing the signature of the complainant.

Unfortunately there were problems with using the evidence. Section 94 of the *Employment Standards Act* says: "The Board may on its own motion reconsider a decision . . . made by it or a panel within 15 days after making it . . .". That deadline had long since passed.

In the interest of justice, the Board should have the power to reconsider its decision in such circumstances. It should have an opportunity to hear this new evidence. It requires more than 15 days from the date of the decision to conduct the further investigation needed and to analyze the new information it may produce. Section 94 of the *Employment Standards Act* may, therefore, be oppressive because it places an unreasonable burden on the party which seeks a reconsideration; it may also be unjust on the grounds that a rigid reconsideration period may result in the defeat of valid claims for want of compliance with a procedural requirement.

I considered it appropriate to ask the Board and the Ministry of Labour to reconsider Section 94 of the *Employment Standards Act* with a view to proposing an amendment which would allow the Board to reconsider a decision, not only on its own motion, but also on application from an affected party and within such additional time as the Board might consider appropriate.

The Board declined to comment on the issue of proposed legislative change deferring to the Deputy Minister who has not yet responded. (CS 82-126)

MINISTRY OF LANDS, PARKS AND HOUSING

Declined, withdrawn, discontinued	28
Resolved: corrected during investigation	34
Substantiated: corrected after recommendation	0
Substantiated but not rectified	3
Not substantiated	[illegible]
Total number of cases closed	129
Number of cases open December 31, 1982	93

Lands, Parks and Housing was again the source of a significant number of complaints. As in previous years, the complaints were primarily against the Lands and Housing Regional Operations Division and the Home Purchase Assistance Branch.

The Ministry's [illegible] Crown lands in British Columbia is carried out by the Lands and Housing Regional Operations Division. [illegible] the following complaint against the [illegible]

Must give warning

The issue in this complaint was whether the Ministry's Land Application Appeal Committee gave a fair appeal hearing to a man whose application for an agricultural lease had been rejected.

The complainant made an application in April, 1981, for 103 hectares of provincial Crown land in the Trout Creek area northwest of Smithers. In September of that year, the application was rejected because the applicant was not an established farmer in accordance with the Trout Creek Land Use Plan. There was insufficient arable land to qualify for an agricultural lease, and the northern half of the lands applied for were said to have a high capacity for wildlife. The complainant immediately appealed the decision to the Land Application Appeal Committee but the Chairman of the Committee suggested that the situation might be resolved through informal appeal mechanisms at the District and Regional levels. These informal appeals proved unsuccessful for the complainant and in February, 1982, he presented a formal appeal to the Land Application Appeal Committee.

The complainant systematically prepared submissions on each of the Ministry's three grounds for rejecting his application and presented his arguments at the appeal hearing. At that hearing, a fourth ground for disallowance was raised which concerned the possibility of the complainant's proposed operation threatening the viability of existing farm units in the area. Although the complainant responded to this argument at the hearing, he had not had a chance to prepare a submission on it.

In April, 1982, the Minister wrote to the complainant upholding the rejection of his application. The Minister accepted the complainant's arguments on the original three grounds for disallowance, but upheld the disallowance on the basis of the fourth ground which was introduced at the appeal hearing.

I concluded from my investigation that the complaint of an unfair appeal hearing was substantiated. The Committee had acted in good faith and had spent more time than usual in assisting the complainant but it was also responsible for the use of an unfair procedure by introducing a new ground for disallowance at that appeal hearing. Although the complainant was given an opportunity at the hearing to respond to this new ground for disallowance, he had not been given a full opportunity to prepare a submission which may have successfully countered the final reason for disallowance.

I recommended that the Ministry grant the complainant an opportunity to prepare a submission on the final reason for disallowance, and that the Minister reconsider his decision in light of this evidence. In November, 1982, the Minister agreed to this recommendation and informed the complainant that he was willing to consider further arguments. The Chairman of the Land Application Appeal Committee informed me that, in light of my recommendations, the Committee would pay particular attention to ensuring that appellants are advised in advance of matters likely to be discussed at hearings. (CS 82-127)

[redacted]

A two-time loser

The complainant had applied for several parcels of agricultural land near Vanderhoof to supplement his farming operation. Various other parties had also expressed an interest in two of the parcels, for which the complainant had made application.

One parcel, for which the complainant was the first applicant, was scheduled for an auction between the complainant and other interested parties. A new policy, however, was subsequently introduced and the eight Regional Offices of the Ministry's Regional Operations Division were informed of the new policy by memo dated May 15, 1981. The memo came from the Deputy Minister. The new policy stated that advertising or auctions would no longer be required for the alienation of agricultural lease land, and that the initiative undertaken by the first applicant should be respected. The complainant was, therefore, notified by letter dated June 26, 1981, that the auction of the lands previously scheduled was cancelled, and that an agricultural lease would be offered to the complainant at the earliest possible date.

As a result of representations made by another interested party, the Minister determined that the previously-scheduled auction should take place, and the complainant was notified of this decision by letter dated July 16, 1981. The auction was held and the complainant was unsuccessful.

The complainant had also applied for an agricultural lease on another parcel of land in the Vanderhoof area but in this case, the complainant was not the first applicant. In a letter dated June 10, 1981, the complainant was informed that his application had been rejected in favour of the first applicant. This was done in accordance with the new policy initiated by the Minister for the disposition of agricultural lease land.

The complainant understandably felt that the Ministry was not consistent and complained to my office. My investigator met with the Assistant Deputy Minister for the Regional Operations Division to resolve the complaint. He subsequently sent a directive to the responsible Regional Director, instructing him to find land with agricultural potential that could be made available to the complainant.

The complainant felt that the first parcel of agricultural land offered to him had virtually no agricultural potential. Other land was located, and suitable replacement property for the agricultural lease land which was lost to the applicant, remains under negotiation. It may be possible for the complainant to obtain a comparable number of arable acres but access remains a problem. The complainant may be required to purchase greater acreage to approximate the original agricultural parcel for which he was the first applicant. Unfortunately, most of the good agricultural land in the area is taken, and there's no perfect solution to the complainant's problem. Further negotiation may be required to ensure that the complainant does not incur additional expense to obtain the replacement land than he would have, had the parcel for which he was the first applicant been made available to him. (CS 82-128)

Man gets his land

A man complained that he was unfairly excluded from a proposed sale of a 54-hectare parcel of agricultural land. The complainant had been advised that the Ministry planned to dispose of the land by way of a closed competition between three individuals. He said this procedure contradicted a Ministry brochure stating that a public competition will be held for Crown land, if other individuals appear to be interested in the property.

The 54-hectare parcel had been assembled by an individual who went to considerable trouble to meet all Ministry eligibility requirements. This individual was advised by letter dated May 15, 1981, that the property would be disposed of by the Ministry, but that a publicly advertised auction was required. The individual contacted the Ministry objecting to this condition because he understood that the land was considered non-competitive. His view appeared to be substantiated by a memorandum to all Regional Directors from the Deputy Minister dated May 15, 1981, stating that in the future, there would be no auction or advertising of applications for agricultural land. Property would be sold to the first qualifying applicant. To clarify the matter, the Regional Office sought direction from the Ministry's executive committee on the method of disposition of the land.

After reviewing the previous interests expressed in the land, the executive committee decided that a closed auction should be held, and that two individuals, whose applications for agricultural parcels within the area had been rejected, should be invited to participate in the competition. These two individuals had applied for substantially smaller areas of Crown land but their applications had been disallowed on the basis that they did not meet the eligibility criteria. Neither individual appealed this decision.

There was no evidence that the original complainant had ever made an application for the purchase of land within the area covered by the 54-hectare parcel, although his son had made an unsuccessful application for the purchase of land in the area.

During my investigation of the initial complaint, my investigator was contacted by the individual who had assembled the 54-hectare parcel. This individual complained that the Ministry was unfairly asking him to participate in an auction with the two individuals whose applications had been previously rejected. He argued that he had not been permitted to make application for land, whereas the applications submitted by the two other individuals were being adjudicated by the Ministry. He felt that the land should be sold directly to him.

I found the initial complaint to be not substantiated, since the complainant had never submitted an application for land within the 54-hectare parcel. I accepted the Ministry's rationale for not including the complainant's son, since his application for a small residential holding did not indicate a prior interest in extensive agricultural disposition. I, nevertheless, indicated my concern that the public was being given inaccurate information about the method of disposition of Crown land. The Ministry agreed to withdraw the brochures which stated that an advertisement will be placed and an auction held if other individuals expressed an interest in a parcel of Crown land. I also expressed my concern about the Ministry's new "first come first served" policy for the disposition of agricultural land.

It appeared that the complainant who had assembled the 54-hectare parcel of land could have appealed to the Land Application Appeal Committee, although the deadline for his appeal had expired. My investigator discussed the case with the Chairman of the Committee who said he was prepared to waive the 30-day time limit for appealing the Regional Director's decision. The Chairman also agreed to contact the other two individuals invited to participate in the closed competition in the process of adjudicating the appeal made by the initial applicant.

After reviewing the recommendations of the Land Application Appeal Committee, the Minister decided to sell the 54-hectare parcel to the person who had complained to me. The complainant was very pleased to learn of the Ministry's decision, and I closed the file on this case.

Several months later, a petition bearing more than 20 signatures, arrived at my office. It objected to the Ministry's decision to alienate the 54-hectare parcel by letting the complainant have it. The petitioners had farms and land holdings in the vicinity and felt the agricultural operation planned by the complainant would adversely affect them. The petitioners subsequently submitted a complaint to me about the commitment to dispose of the 54-hectare parcel to the complainant.

The objections raised by the petitioners underline my concerns about the Ministry's May 15, 1981 policy not to advertise or require auctions for the sale of Crown land. I am now taking up this matter with the Ministry in several current investigations. (CS 82-129)

[redacted]

Appraisal antics

Early in 1982, I received a complaint that the Ministry of Lands, Parks and Housing had demanded an unreasonably high lease rental. The Ministry's Regional Office had offered the complainant a 30-year prepaid Crown lease for 75 percent of fair market value of the land. The Ministry's appraiser had set the fair market value of the land at $12,000; the lease price was set at $9,000. The complainant had already accepted the Ministry's offer by the time he came to me, because of a deadline set by the Ministry but because of access problems to the property caused by extreme winter conditions, the complainant wanted more time to obtain a private appraisal to dispute the value determined by the Ministry.

The complainant was given until the end of June to obtain a private appraisal, and the Ministry agreed to split the difference between the two appraisals, if the private appraisal was up to 10 percent less than the Ministry's appraised value. If it came in below that, the matter would be referred to the Land Application Appeal Committee for its decision.

The complainant came back to my office in early October, 1982, with a further complaint that the Ministry was not willing to accept the private appraisal. The value set by the complainant's appraiser was $3,800. Finally, the Ministry engaged a private appraiser who came up with a value of $5,500 for the property.

The private appraisal obtained by the complainant appeared to be more comprehensive than the appraisal on which the Ministry's original offer of $12,000 was based, and I appreciated the complainant's frustration over the Ministry's refusal to accept the validity of his appraisal. The complainant, however, had the option of going to arbitration, if he continued to feel that the Ministry's new appraisal of $5,500 was unduly high. This was in accordance with the original agreement the complainant made with the Ministry in early 1982. That agreement was in no way altered by the Ministry's subsequent decision to obtain its own private appraisal. I was, therefore, unable to conclude that the Ministry's Regional Office acted unfairly in obtaining a third appraisal, and I decided not to examine the objections raised by the Ministry to the complainant's appraiser, as it would no longer serve any purpose. (CS 82-130)

Relative fairness

I received a complaint from an individual who had lost acreage to the Libby Dam project some time ago. The complainant had applied for replacement land but felt that the price for the land was excessive, although not in absolute terms. He believed that the Ministry was acting unfairly because it was offering comparable land to other individuals at lower prices. The complainant provided my assistant with two specific examples of similar land which had been offered to his uncle and to another Libby Pondage displacee.

My assistant discussed the discrepancy in the price difference of the three properties with the land inspector who had carried out two of the appraisals. The land inspector provided my assistant with reasons for the discrepancy in price per acre between the complainant's parcel and the parcel offered to the other Libby Pondage displacee. The procedures used in evaluating the two properties did not appear open to criticism, and I did not believe that it was my role to enter into a controversy over the respective values set for these two parcels.

The Ministry said that the outstanding offer to the complainant's uncle was based on an old appraisal, and that the offer would be withdrawn, so that a new appraisal could be conducted. This new appraisal was expected to come in at the same price level or higher than that established for the property offered to the complainant. The Ministry said that an error had been made in the legal description of the property offered to the complainant's uncle, and that the Ministry, therefore, had the authority to withdraw the outstanding offer to the uncle.

I informed the complainant that I did not consider his complaint substantiated and suggested that his uncle may wish to get in touch with me, if the Ministry raised the purchase price, as suggested.

The complainant's uncle subsequently came to me, and I informed him of the available appeal route to the Land Application Appeal Committee. I have had some experience with the reviews conducted by that Committee. Appeals by aggrieved applicants are generally given thorough and impartial consideration, and adequate reasons for the appeal committee's decisions are provided. The complainant had an adequate remedy and I informed him that I would be willing to reconsider the matter at some time in the future, if he felt that his appeal had not been fairly considered by the Land Application Appeal Committee. (CS 82-131)

Losing land to a park

A complainant accused the Ministry of offering his family unfairly low prices for three waterfront properties on the south-west coast of Vancouver Island. The properties fell within the proposed boundaries of the Pacific Rim National Park.

The Pacific Rim National Park was established by statute, and a federal-provincial agreement was signed in 1970 to acquire lands in the proposed park in three phases. The Ministry, on behalf of the provincial government, assumed the responsibility for land acquisition. Phase I and II lands were designated in 1970, and acquisition proceeded at that time. The complainant's properties lay within Phase III, which was to have been designated in 1973 and all land acquired by 1975 but agitation for inclusion of a watershed area in the proposed boundaries of Phase III began in 1972. As a result of the boundary dispute and the question of adequate compensation for the loss of the licences held by timber companies, there were considerable delays in designating and aquiring any of the land in Phase III. The fact that all decisions had to be vetted by the two levels of government, resulted in further administrative delays.

In 1980, I received additional complaints from people who had suffered hardship because of the serious delays in dealings with the owners of private property in the area. The complainants wanted government to take positive action with respect to the question of land acquisition. The Ministry subsequently decided to deal with the privately-held land in the area in isolation of the timber tenure problems and proceeded with the acquisition of privately-held property. It appeared that the complainants' basic demand for action had been met and I withdrew from the case. In May, 1982, one of the complainants told me that the Ministry's offers were unreasonably low. The complainant had experience in real estate matters and presented a number of arguments and examples of comparable property to support his claim that the Ministry's appraisals were too low. I did not consider it appropriate to get involved in a controversy over the value of a parcel of land but I believe that government has an obligation to guarantee justice for citizens whose property it acquires for the common good. I proposed a re-appraisal of the properties, which was subsequently done. Under the terms of this proposal, the Ministry agreed to provide the complainant with a list of six appraisal firms, from which he would choose one. An appraisal of the three lots would then be done. If the new appraisal came in at 10 percent or more above the market value determined by the Ministry's appraiser, the Ministry would pay for the cost of the appraisal and increase its offer in accordance with the new appraisal. If the new appraisal came in at less than 10 percent above the Ministry offer, the complainant agreed to pay for the cost of the appraisal himself and accept the Ministry's offer.

The complainant was satisfied with this arrangement, and I discontinued my investigation. (CS 82-132)

Finally, there were complaints that did not fit into any category but were interesting in their own right. The following is a good example.

Minister has heart for pioneer

My complainant was 79 years old when he buttonholed me during my visit to Salmon Arm in February 1982. He and his wife had both retired after a long working life moving around various work sites throughout British Columbia. They were both in ill health and living on a meagre retirement allowance. My complainant had one last hope for improving his situation and one lifelong ambition: he sought the return of his family's homestead which his father was forced to abandon in the late 1920's.

My complainant held a certificate of title to what he thought was the old homestead and farm. Alas, when he tried to re-claim the land, he discovered that the legal description on his title made him the proud owner of several acres of barren rock-cliff—right next door to where the homestead used to be. It became obvious to my complainant that an error had been made way back in 1913 or 1922—but try as he might, he could not convince officialdom to recognize his claim. He had devoted the last 18 years of his life to gaining recognition of his right and to reestablishing his roots at his family's old home. At least three MLAs, one Cabinet Minister, an MP, a lawyer, and the Dominion Archivist had lent a helping hand, and yet, success had eluded my complainant.

In 1913 my complainant's father received some 40 acres of land near Revelstoke as his reward for service in the Boer War. It was a condition of the land grant that he "prove up", meaning clear and cultivate, one or two acres each year, which he faithfully did. By 1922 the father had cultivated enough land to earn title to the land. Someone assisted the father in completing an application form in 1922 which contained in bold print the stern and prophetic notation: "Special care should be taken that the land is correctly described in the evidence of the homesteader and witnesses".

The complainant said that his father could write his name but was otherwise illiterate at the time of the signing of the 1913 homestead entry and 1922 application for title to the land. He would, therefore, have been obliged to rely upon the legal description and explanations provided by the local Dominion Land Agent. The federal homestead legislation, containing the *Dominion Land Act*, placed the onus for determining that the requirements of obtaining a Dominion Letters Patent had been met, on the local Land Agent. The complainant recalled that the Agent paid annual visits to the homestead between 1913 and 1922 to verify that the required cultivation was being carried out.

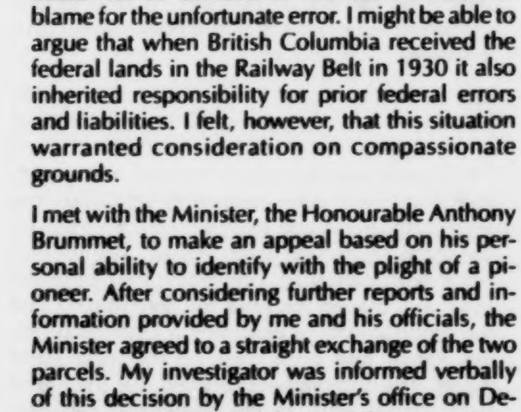
It is impossible to reconstruct these events with any degree of accuracy or reliability but it appeared quite probable that the lot number of the neighbouring rocky area was erroneously entered onto the 1922 title application of my complainant's father. The error was not discovered until almost half a century later when my complainant tried to re-claim the old homestead. The forest had long re-claimed the land; the federal and provincial governments had built the Trans-Canada Highway across the land and officially the old farm had reverted to the Crown.

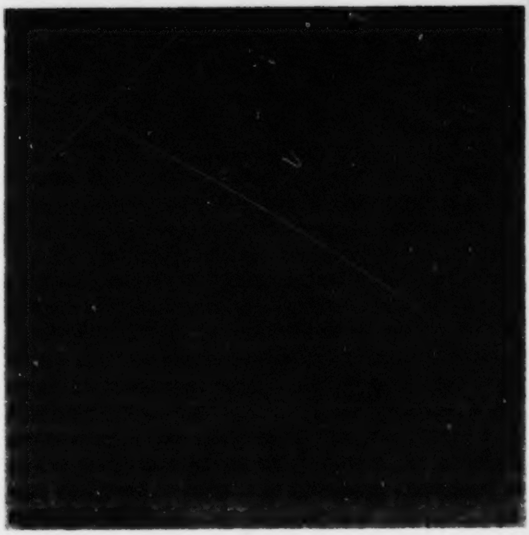
In his efforts to prove his claim, my complainant had obtained statutory declarations from former neighbours, attesting to the existence of the old family homestead. A land examination was done by provincial government officials in 1964, in the company of the complainant. He established evidence of small areas of old clearing and the remains of a house cellar. The original stakes and any remaining evidence of the homestead were buried approximately 10 years before the complainant came to me. The land of the old homestead and surrounding land was transferred back to the provincial government in 1930. It had originally been transferred to the Dominion of Canada on B.C.'s entry into Confederation, for the construction of the Canadian Pacific Railway and became part of "The Railway Belt". A 1930 amendment to the *British North America Act* transferred Canada's remaining interest in the Railway Belt to the province.

While it was impossible to reconstruct the events of more than 50 years ago, there was strong circumstantial support for the complainant's view that an error had been made by the local Dominion Land Agent.

In view of the fact that the error took place some time before the property came under the control of the province, I was fully aware that this case could not be decided on the basis of fault or blame for the unfortunate error. I might be able to argue that when British Columbia received the federal lands in the Railway Belt in 1930 it also inherited responsibility for prior federal errors and liabilities. I felt, however, that this situation warranted consideration on compassionate grounds.

I met with the Minister, the Honourable Anthony Brummet, to make an appeal based on his personal ability to identify with the plight of a pioneer. After considering further reports and information provided by me and his officials, the Minister agreed to a straight exchange of the two parcels. My investigator was informed verbally of this decision by the Minister's office on December 13, 1982, and the complainant was informed of the Minister's decision the following day. No doubt his Christmas was made considerably merrier by the timely tidings. (CS 82-133)



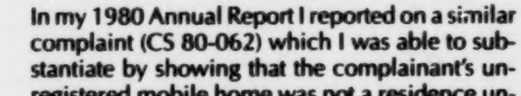


It may be legal, but it ain't fair!

A couple complained that they were unfairly denied a First Home Grant because they had previously owned a mobile home. Since they had been denied a first home grant for their mobile home several year earlier, they thought it was unfair to have their new home grant application now denied because of the earlier possession of the mobile home.

In my 1980 Annual Report I reported on a similar complaint (CS 80-062) which I was able to substantiate by showing that the complainant's unregistered mobile home was not a residence under the *Home Purchase Act* and its regulations. Since that earlier report, however, the Ministry has changed its regulations to state clearly that a mobile home is a residence under the *Home Purchase Assistance Act*. Because of this change in the regulations, I had to conclude reluctantly that the Ministry's denial of this application for a First Home Grant was in accordance with the law.

I had several similar complaints in 1982 and all had the same conclusion. The change in the regulations modifies the way benefits are distributed to the public, and it is not surprising that some people feel they were treated unfairly twice. (CS 82-134)



Misinformation leads to debt

The Ministry of Lands, Parks and Housing administers a program under which families, purchasing their first home, may apply for a Family First Home Grant. The Program is administered under the *Home Purchase Assistance Act*, and specific regulations spell out the basis for eligibility. Through an Order in Council, the upper limit of the purchase price of a home qualifying for a grant, is determined from time to time, according to the fluctuations of the real estate market.

A husband and wife complained that they had been given incorrect and misleading information from the Ministry when they made initial inquiries and subsequent application for a Family First Home Grant. As a result of the misrepresentations made to them, which included an assurance of entitlement to a grant, the Family borrowed $2,000, bought materials and started building a basement room which they needed because they expected their third child. After the project was completed, the family was advised that, notwithstanding any previous information, they did not qualify for the grant. The Ministry acknowledged that it had wrongly advised the couple that the purchase price was within the limits set in the existing Order in Council as of the date of purchase, since the purchase price turned out to be just in excess of that amount on the date of purchase. It was, however, within a new limit set shortly after the purchase, but the Ministry took the position it had no legal authority to make a payment to the family. The issue was whether the family should be compensated for the losses they suffered as a result of acting on the information and assurances provided by Ministry officials.

Through the provisions of the *Crown Proceedings Act*, the Ministry of Attorney General was asked to approve compensation to the family in the amount of $2,000. It was pointed out that the family went from a position of no debt to being responsible for a $2,000 debt, plus interest, because of wrong information given by the Ministry of Lands, Parks and Housing. The Ministry of Attorney General concluded after debating the issue for over one year that an enforceable legal claim existed and recommended that the Minister of Finance issue a cheque to the family in the amount of $2,000 plus interest. This was done to the complete satisfaction of all concerned. (CS 82-135)

[redacted]

B.C. phone home

E.T. managed to phone home in 1982 but many people from B.C. were less successful in trying to phone the Home Purchase Assistance Branch. One person complained to me that he had phoned the Branch at 387-5381 constantly for two days and had always received a busy signal.

A member of my staff reviewed this complaint with the Manager of the Branch and discovered that he, too, was concerned about the problem. Arrangements were made with B.C. Tel to increase the exchange capacity, so that more people can get through to the Branch. (CS 82-136)

MINISTRY OF MUNICIPAL AFFAIRS

[redacted]

[redacted]

Minister changed his mind

One case I investigated was initiated by a woman on behalf of a citizens' group which opposed a Regional District's zoning amendment by-law. The Minister of Municipal Affairs initially refused to approve the by-law on the basis that the rezoning could adversely affect water quality in the lake, along whose banks the rezoning was to take place. The association which complained to me alleged that the Minister's mind had been changed by the local MLA who supported the by-law.

The Ministry sent my office a four-page chronology of the events leading up to the approval of the zoning by-law. On reviewing this document, the complainant decided to withdraw the complaint because it appeared that the Minister's original concerns about water quality had been allayed by further steps to be taken by the developer whose project had prompted the rezoning amendment. It appeared that the MLA's communication with the Minister had coincided with the new information from the developer but had not been the reason for the approval of the by-law. (CS 82-137)

[illegible]

Detached means denied

The members of a housing co-operative and the members of a housing company complained to me that they, as individual occupants of housing units, were not eligible to receive home owner grants.

The *Home Owner Grant Act* provides that shareholders in a housing company, who live on the property owned by the corporation qualify for the home owner grant. The only further requirement for eligibility is that the housing units be joined to one another or share a common roof. My complainants were not eligible for the grant because their housing units were detached dwellings.

During the investigation, I found out that owners of mobile homes situated on property which has not been subdivided into separate parcels are eligible for home owner grants, as long as the mobile home is the principal residence of its owner.

I informed the Ministry that it was unjust that occupants of housing units who also owned shares in the co-operative or company which owned the property, do not qualify for a home owner grant merely because the dwelling units were not joined to each other. The Ministry stated that the necessary amendments to the *Home Owner Grant Act* would be prepared. I expect that this amendment will be introduced at the next session of the Legislature and passed without further delay. This change will allow both categories of individuals who complained to me to receive benefits under the *Home Owner Grant Act*. (CS 82-138)

Grant approved after all

The *Home Owner Grant Act* provides that a person may collect the larger of the two grants available under the Act, if the claimant is over 65 years of age, is handicapped, or is in receipt of handicapped person's income assistance under the *Guaranteed Available Income for Need Act* during the current tax year. A woman complained to me that she had been denied the larger grant by the Tax Collector. She was not over 65 years of age but was emotionally handicapped and had received handicapped person's income assistance until March 1982, when she qualified for a disability pension.

The Tax Collector had denied her the grant because she was not physically handicapped, as specified in the Regulation to the *Home Owner Grant Act*, and because she was no longer receiving the *G.A.I.N. Act* handicapped person's income assistance.

I pointed out that the *Home Owner Grant Act* entitled a person to claim the larger grant if he or she was in receipt of handicapped person's income assistance "during the current tax year". The Ministry agreed with my interpretation that my complainant qualified because she had received Handicapped Person's Income Assistance during the first three months of the current tax year. The matter was resolved when the Tax Collector allowed the complainant to claim for 1982 the larger grant available under the *Home Owner Grant Act*. (CS 82-139)

[illegible]

Whose pump is that?

I investigated a complaint from a man who was involved in a long-standing dispute with the municipal council of a small community in B.C. The dispute concerned the responsibility for operation and maintenance of a sewer pump which was originally installed on the complainant's property by the municipality. When the man first came to me, I referred him to the Inspector of Municipalities for investigation of his complaint. Following the Inspector's review of the situation, the man again complained to me that he was not satisfied with the Inspector's conclusion.

I obtained a copy of the Inspector's report and found it to be detailed and comprehensive. The conclusions, although not favourable to the complainant, were consistent with the facts of the situation and the relevant legislation. For these reasons, I was unable to assist the complainant. I advised the man that, as his contention was based on an alleged verbal undertaking made to him by the former City Council, the court would be a more appropriate forum for deciding the case. (CS 82-140)

Access to reports

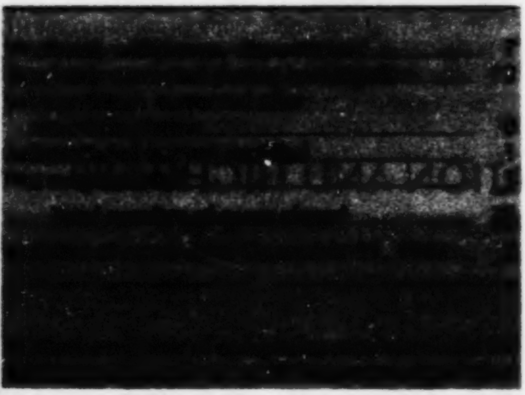
A person complained to me that the Inspector of Municipalities had refused to furnish him with a copy of a report about an investigation carried out by Ministry staff regarding the development of a certain property in a municipality.

Before coming to my office, the complainant suggested to the Inspector that the municipality had acted improperly. He believed there were irregularities in the manner in which the subdivision of the property was carried out, that contravention of zoning by-laws had taken place and that building had taken place without required permits first being issued. As requested by the complainant, the Inspector of Municipalities carried out an investigation and the complainant was advised of the results.

Almost a year later, he asked the Inspector of Municipalities to make the full report of the investigation available to him for use in a legal action he was pursuing. The Inspector of Municipalities informed the complainant that it was neither practice nor policy to make such reports available to the public.

My investigator met with Ministry officials and after reconsideration, it was agreed that the full report of the investigation would be made available to the complainant. This was done and the complaint was concluded in an equitable manner. (CS 82-141)

MINISTRY OF PROVINCIAL SECRETARY AND GOVERNMENT SERVICES



Name, rank and serial number

During spring 1982, I received several complaints about the form British Columbians were required to complete in order to have their names placed on the provincial voters list. The form required that applicants provide both their Social Insurance Number and their date of birth. Some confusion appeared to exist. Some enumerators told applicants that they did not have to provide their Social Insurance Number and birthdate, others insisted that both must be provided. Upon inquiry, the Registrar General of Voters assured me that a person is not refused registration if he fails to provide his Social Insurance Number.

The form used for enumeration purposes is prescribed by B.C. Regulation 95/66 of the *Provincial Elections Act*. The Regulation specifies that there should be a question on the form "Social Insurance Number *or* Birthday". The form then in use asked for an applicant's Social Insurance Number *and* Birthday. I drew this difference in wording to the attention of the Registrar, and he assured me that, on future printings, the necessary correction would be made.

Later in the year, the Registrar provided me with a copy of the new form. The form now asks for either the Social Insurance Number or the date of birth. On the reverse side of the form, applicants are informed that both items constitute voluntary information which will assist the Registrar in distinguishing between applicants with the same name. (CS 82-142)

Who is in charge here?

A woman had been employed on an auxiliary basis by the Registrar of Voters. She was told that she was not eligible to receive the salary increase negotiated between the B.C. Government Employees Union and the Government, because she had not been appointed under the *Public Service Act*, but rather by the Registrar of Voters under the *Election Act*. She felt that she should qualify for the government-wide salary increase and complained to me.

My investigator phoned the office of the Registrar of Voters and was told that the Registrar, under a certain section of the *Election Act*, had the authority to appoint staff and to set salaries. We checked the section that had been quoted, but our interpretation was different.

My investigator also got in touch with the Personnel Department of the Ministry of Provincial Secretary and Government Services, which seemed aware of the problem and also interpreted of the pertinent section of the *Election Act* differently.

The personnel office felt that my complainant was, indeed, entitled to receive a salary increase, just as everybody else but I was told it was necessary for the complainant to send a letter to that personnel department, requesting the increase.

The complainant was initially reluctant to write such a letter, because she felt that her future employment chances would be jeopardized. Nevertheless, she assured my assistant that she would write the letter.

This complaint was important in a wider sense, because the Registrar of Voters employs a large number of people who did not receive a salary increase. The Ministry has in the meantime informed me that all those employed by the Registrar will now receive salaries equal to those paid to public servants. (CS 82-143)

The cheque is in the mail

Claiming she had spent four hours on the telephone, trying to straighten out a mix-up, a distraught young mother came to me with the following tale of woe. Employed temporarily as an enumerator, she had indicated that she did not want her employer, the Provincial Government, to deduct income tax from her pay. As this was likely to be her only employment for the year, she wished to be paid her total earnings. When her cheque arrived, however, the income tax amount had been deducted.

The Ministry suggested she return the cheque. A new one would be issued for the full amount. The first cheque had taken almost three weeks to reach her and because she needed the money, she was reluctant to part with it, fearing that a replacement cheque would likely take the same time to reach her.

A few telephone calls from my staff located an understanding comptroller in the Elections Branch. He took hold of the problem and after making inquiries called me back with the welcome news that it would be possible to issue a supplementary cheque.

It took several days for the second cheque to arrive, but arrive it did. The woman had received what was rightfully hers, without going through a bureaucratic shuffle thanks in large measure to a public servant willing to make the system work for a citizen. (CS 82-144)

MINISTRY OF TRANSPORTATION AND HIGHWAYS

Declined, withdrawn, discontinued	83
Resolved, corrected during investigation	50
Substantiated, corrected after recommendation	14
Substantiated but not rectified	2
Not substantiated	71
Total number of cases closed	220
Number of cases open December 31, 1982	100

[illegible]

lic roads "in his absolute discretion." Because the Ministry has developed no explicit criteria upon which such decisions are to be based, I am always concerned that such decisions are not made arbitrarily or based on irrelevant considerations.

A common request to the Ministry is that it construct a public access road to private property. Ordinarily, the law requires that public access be provided, at the time of subdivision, to all new parcels of land being created. Yet, there are many properties in the Province which were created years ago without a public access road. Does the Ministry have a responsibility to construct [illegible] public [illegible] access to these properties?

Access please!

My complainant had purchased a lot out in the boonies many years ago. He got a real deal on it because there was no road into the property. More recently, he and several of his neighbours had asked the Ministry to construct a road into their properties. The Ministry refused.

I concluded that the complaint was not substantiated. If the construction of a road will benefit only a few private individuals, I do not think that the road ought to be constructed at public expense. Because the road will increase the values of the properties to which it will provide access, I think that the property owners should construct the road at their own expense.

In this case, because the area was developing and a large number of people would be served, the Ministry undertook to review the request for a road again and to construct it when it appeared necessary to serve the public interest. (CS 82-145)

[illegible]

And justice for all

Early in 1981, a resident of a rural area complained that a Highways grader had dumped snow into a ditch which provided drainage for his property. The pile of snow had obstructed water running down the ditch as the snow melted, and the water had diverted onto his property and into the basement of his house. A large amount of his belongings were damaged.

The complaint seemed to me relatively straightforward. The Ministry had done something which had, in turn, caused damage to the complainant's property, and hence it should compensate the complainant for the damage. The Ministry, however, argued there was no other place to dump the snow but in the ditch; therefore, it had not been negligent in putting the snow there, and consequently it was not liable to compensate the complainant for the damage he had suffered. The Ministry argued that because the complainant could probably not prove that it had been legally negligent, it had no obligation to pay him for the damage.

This is one of the cases which I have reported as being not rectified. The Ministry continues to decline to compensate the complainant for his loss. I am concerned about the Ministry's policy of refusing to accept responsibility and pay compensation except if it could be sued successfully in the courts. Because a citizen is not allowed to sue the government in a Small Claims Court, for many of these damage claims there is no reasonable and practical remedy available to the complainant. And even if the complainant could afford to sue the government in the Supreme Court, the government has an army of lawyers at its disposal to exhaust the complainant's financial resources in the legal process. I do not believe that justice should be available only to those who can afford it. (CS 82-146)

Last-ditch effort

A home owner with a flooding problem found it necessary to construct a ditch alongside a public road. Since the flooded area included both her property and the road, she felt that she should be reimbursed for the cost of installing the ditch which, she felt, should have been provided by the Ministry in the first place. The flooding, however, had not originated from the road, but rather water ran across the private property and onto the road, which did not act as a dam to contain the water on the private land.

I decided that the complaint was not substantiated on the basis that the responsibility of the Ministry is limited to providing the necessary drainage of the highway, without interfering with the drainage of surrounding private lands. In this instance, the flooding of the private land was not caused by the highway and would have occurred, even if the highway had not been there. I did not find any responsibility on the part of the Ministry to incur the cost of the ditch. (CS 82-147)

Compromise works

During the process of reconstructing a highway, the Ministry of Transportation and Highways diverted a stream, so that it ran through a ditch next to my complainant's septic field. The complainant alleged that the stream had caused the soil in the septic field to erode, thus exposing the pipes in her septic field. When initially contacted, the Ministry argued that the stream had not caused the erosion, but that it had resulted from the poor construction of the septic field and the natural seepage of ground water.

This was one of those occasions in which I thought it appropriate to send my investigator to meet with all parties involved at the complainant's property. After inspecting the site with the complainant and an official of the Ministry, the Ministry agreed to take some measures to remedy the problem, and the complainant agreed to be responsible for the rest. In such cases, it is often difficult or impossible to determine who precisely caused the problem. I see my role as trying to find a resolution to the problem, even though it might not be completely satisfactory to all parties. In this case, I think that both the Ministry and the complainant gave a little more than they felt they should, and took a little bit less than they thought they deserved. Through this spirit of co-operation, the complaint was resolved. (CS 82-148)

The Ministry exercises a great responsibility through its control of the subdivision process of private property in all rural areas of the Province. The law provides that certain basic requirements (such as public access) must be met before land may be subdivided and authorizes the Ministry's Approving Officers to make various other demands before granting approval to a subdivision application. I have received many complaints about the refusal of an approving officer to permit land to be subdivided or about the conditions the approving officer has attached to his approval of a subdivision application.

Upgrading not necessary

A property owner objected to a condition of subdivision approval that a road, crossing the property, be constructed to an improved standard. This condition had not been included in the original preliminary approval from the approving officer, and would add considerable expense to completing the subdivision. The complainant was asked to promise that he would make no demands on the government for services (such as roads), and he argued that the Ministry was trying to have its cake and eat it too.

The complaint was resolved during the course of the investigation when the Ministry agreed to withdraw the condition that the road be upgraded. Since expected demands on the road were minimal (access to the area is by water only), and the original conditions had not called for upgrading, it did not appear necessary or appropriate to require the higher standard. (CS 82-149)

Better safe than sorry

A man who had applied to subdivide his property complained that the approving officer had requested an engineer's report before he would decide whether to approve the proposed plan of subdivision. The request had been made because the land was located in an area where there is a risk of rock falling, and therefore, technical information was necessary to define on the plan which parts of the land could be used as building sites.

I found that the complaint was not substantiated. Although the requirement created some delay and expense for the complainant, the principle that the applicant should ensure safety in future use of the property appeared sound in both law and policy. (CS 82-150)

Public access provided

All of the property around the only lake in the area was owned by my complainant's neighbour. My complainant and the other neighbours were not able to use the lake for fishing and boating, even though it is a public lake, because there was no public access road to the lake.

The neighbour who owned the land surrounding the lake applied to subdivide a part of it. The *Land Title Act* requires that at the time of subdivision, access roads must be dedicated to lakes and rivers owned by the Crown, if none previously exist. In this case, however, the Ministry of Transportation and Highways decided to waive this requirement, so that the owner of the property would not have to provide public access to the lake. My complainant alleged that the Ministry had acted improperly in waiving the requirement of public access to a public lake.

I discovered during the course of my investigation that the Ministry's decision to waive the requirement of public access was based on a memo written by the local public health inspector, emphasizing the need for the protection of the quality of water in the lake. However, when my investigator contacted the public health inspector, he was advised that the water quality in the lake would not be adversely affected by a public access road to the lake, provided that certain conditions were met. The Ministry of Transportation and Highways had not discussed the matter with the public health inspector, and hence had based its decision on incomplete information.

I concluded that the Ministry had erred in waiving the requirement of public access to the lake, and wrote to the Ministry setting out my conclusions. The Ministry immediately rectified the problem by requiring that the subdivider provide public access to the lake. (CS 82-151)

House can't stay forever

A couple purchased a house which encroached on a public road allowance. This encroachment was the result of a dedication of the road allowance by a previous owner to the Ministry at the time of subdivision. The couple objected to a clause in their permit from the Ministry which allowed them to leave the house on the road allowance only until the right-of-way was needed for road improvements, at which time the house would have to be moved.

After confirming that realignment of the road was not a feasible solution, I decided that the complaint was not substantiated on the basis that at the time of subdivision, the Ministry gave explicit notice that its permission would be withdrawn, once it needed the road allowance. The Ministry advised that approvals of subdivisions with encroachments are now declining because of resulting problems for subsequent owners. (CS 82-152)

MOTOR VEHICLE DEPARTMENT

The high degree of co-operation and assistance from the Superintendent of Motor Vehicles and his staff to which I made reference in my 1981 Annual Report, has continued this year. In a number of cases, it has been possible to reach resolutions to individual complaints through the intervention of senior Motor Vehicle Department personnel. Similarly, these officials have also been receptive to discussions of more general policy issues.

I continue to receive complaints, however, about the denial of driver's licences on medical grounds, and my staff will be monitoring the administrative fairness of the improved medical appeal procedures agreed to by the Motor Vehicle Department. A detailed report of my investigation in this area appears below.

FAIRNESS AT LAST

I have received over the past three years about 20 complaints from drivers who have had their licences suspended, or who have been refused a driver's licence, because they were, in the opinion of the Superintendent of Motor Vehicles, not medically fit to drive safely. Usually these complaints come from individuals who had held a commercial driver's licence and depended on it for their livelihood. Losing their licence was not a mere inconvenience; it meant a change in their career.

Invariably, upon investigation, I would be informed that the licence had been suspended because the Guide for Physicians in Determining Fitness to Drive a Motor Vehicle, published by the B.C. Medical Association, prohibited such drivers from operating vehicles. On reviewing the Guide's contents it seemed to me that the Guide was intended to be simply that, a set of guidelines to aid physicians in determining whether individuals are medically fit to hold a driver's licence. In almost all of the complaints that have come to my attention, the complainant's physician had recommended to the Superintendent that the complainant be given a driver's licence. Yet, in each of these cases, the Superintendent had refused to issue the licence.

I discovered that in the past ten years, two individuals had taken the Superintendent to court because of a similar decision. In each case, the court had instructed the Superintendent to cease his policy of simply applying the rules in the Guide, and instead to review the merits of each case. In other words, the court concluded that the Superintendent was acting contrary to law when he did not consider all of the medical evidence in each individual case. The court held that it was improper to employ policy guidelines in making such decisions. Mr. Justice Taylor of the Supreme Court of British Columbia put it this way:

> "Those performing the Superintendent's duties quite understandably desire to avoid consideration of the merits of individual cases, and the controversy that arises when applicants are turned down on the basis of judgment. They prefer the strict application of rules to which reference can be made. Had the Legislature desired that licences be granted or refused on the basis of compliance with particular standards, it would have authorized such standards to be established by Regulation. Instead, it has determined that the decision should be determined on 'fitness' and 'ability' and made the Superintendent and his delegates judges of these qualities in individual applicants."

I concluded that the Motor Vehicle Department's continued practice of applying the Guide for Physicians as a set of standards was not only unfair and arbitrary, but was also contrary to law as interpreted by the Supreme Court.

During the past year, the Motor Vehicle Department and I held a number of discussions about the types of changes which should be made to the Department's procedures. Finally, during the summer of 1982, we were able to reach agreement on these changes, and the Department has now issued revised policy instructions to all staff. The new procedures provide that if the Department is of the opinion that an individual ought not to hold a driver's licence, it will write to him and invite him to provide further information about his medical condition. He might get a letter from his physician, a report from a medical specialist, and the results of any medical or laboratory tests which are carried

[redacted]

Now you tell me

An individual with a history of epilepsy objected to the manner in which he was treated by personnel at one of the Motor Vehicle offices in Vancouver. The complainant had applied for a Class 4 driver's licence, and was asked to wait approximately an hour for an examiner who was to give him a road test. When an examiner became available, the complainant was informed that although he could take the road test, he would not be successful in obtaining a Class 4 licence because of his history of epilepsy. The examiner subsequently called his supervisor, who informed the complainant that he had the right to appeal a refusal of his application to the Superintendent of Motor Vehicles, but that the supervisor believed the complainant would not be successful.

The complainant objected to the fact that he had been required to wait approximately an hour before receiving this information. He was also concerned that the discussions did not take place in private and could be overheard by other people in the vicinity.

It was not possible to identify either the examiner or his supervisor by name. The Chief Examiner for the Department claimed that examiners had been instructed during their training period about the importance of privacy in discussing medical conditions. However, a substantial part of training for an examiner takes place on the job. The Assistant Chief Examiner was scheduled to visit the Motor Vehicle office in the near future, and he agreed to discuss procedural matters of this nature with examiners at that time. I accepted the Chief Examiner's explanation that a clerk would not necessarily be able to give an individual all the necessary information about the effect of a particular medical condition on applications for different classes of licences, and that this information should, therefore, be provided by an examiner.

I informed the Ministry that I decided not to pursue this complaint further, but that I may review this decision if I received similar complaints in the future. (CS 82-153)

[redacted]

Procedures changed

A driver complained that the Motor Vehicle Department had not notified him of his driver's licence suspension in June 1981. Because he did not receive this notice, he continued to drive while his licence was suspended. In August 1981, he was involved in a car accident and ICBC refused to repair his car because he was driving while his licence was suspended. The man felt the Motor Vehicle Department's procedure for notifing drivers was inadequate.

Under the *Motor Vehicle Act*, the Superintendent of Motor Vehicles has the authority to suspend a person's driver's licence because of a conviction of a driving offence in another province, or for a similar offence in a state, territory, or the District of Columbia in the United States. My complainant was convicted of reckless driving in Washington State. The Superintendent sent him a letter in June, notifying him of his driver's licence suspension. Because the suspension was an automatic suspension for a conviction of an offence, the Department did not double-register the notice to the driver. Instead, it went in the regular mail.

My complainant maintained he never received the letter. I could not verify this claim but I thought the Division's notification procedure could be more effective.

The Motor Vehicle Department agreed to change its procedure. Now, drivers who are convicted of an offence in a state, territory, or the District of Columbia in the United States, will be sent a double-registered notice. In this way, the Department can be sure that the driver has received the notice, before his driver's licence is suspended. (CS 82-154)

It's not nice to fool the Ombudsman

Once in a while someone tries to use my office to avoid responsibilities under the law. In this case, the Motor Vehicle Department had suspended the complainant's driver's licence, because he had failed to pay an unsatisfied judgment against him, resulting from a traffic accident in 1973. When the police tried to seize the complainant's driver's licence, he contacted me and alleged that he had not been involved in a traffic accident in 1973. Instead, he claimed that he had lost his driver's licence at that time and someone else must have produced his driver's licence at the time of the traffic accident.

It initially appeared to me that the complainant might have been telling the truth. In fact, a driver's licence was issued to him shortly after the accident, suggesting that he had applied for a new driver's licence after losing his original one. However, documents on file at the Motor Vehicle Department indicated beyond a doubt that the complainant was the person who had been involved in the traffic accident. Further, it quickly became obvious that the complainant had misled my investigator on a variety of matters, and that his statements could not be given a great deal of credibility.

My conclusion was that the Department had acted correctly in suspending the complainant's driver's licence until such time as he paid the judgment arising from the motor vehicle accident. (CS 82-155)

Overjoyed

An unemployed 48 year old man had been suspended from driving in British Columbia for three months. Towards the end of the period of suspension, he was able to find a job, but he was asked to start eight days before the expiry of the suspension of his driver's licence. The job involved driving and he needed his driver's licence. He contacted the Motor Vehicle Department but was told that he could not get his licence back before the end of the suspension period.

After I received this complaint, my investigator contacted the Superintendent of Motor Vehicles. After hearing all the circumstances, and realizing that the man depended upon the reinstatement of his licence to start his new job, the Superintendent generously agreed to waive the final eight days of the period of suspension. My complainant was overjoyed with the news and was able to start his new job on time. (CS 82-156)

Rights not violated

A motorist complained that the Superintendent of Motor Vehicles had contravened the Charter of Rights and Freedoms by prohibiting him from driving for a period of three months in British Columbia. This prohibition was imposed after the motorist was convicted on a charge of impaired driving in the State of Washington. The complainant felt that his rights had been violated because he had already been penalized and suspended from driving for a period of one month in the State of Washington, although he had left Washington before the suspension had taken effect in that state.

The Superintendent of Motor Vehicles has the authority to prohibit persons from driving in the Province of British Columbia under section 86 of the *Motor Vehicle Act*. This section provides that the Superintendent may prohibit a person from driving a motor vehicle if that person's privilege of driving a motor vehicle has been suspended or cancelled in any jurisdiction in Canada or in the United States of America— notwithstanding that the person may be subject to another prohibition from driving.

The new Charter of Rights and Freedoms which is contained within the *Constitution Act, 1981*, grants individuals charged with an offence certain rights. Under Section 11 of the Charter, a person who has been found guilty and punished for an offence has the right not to be tried or punished for it again.

The argument raised by the complainant was a legal issue. He called into question the validity of section 86 of the *Motor Vehicle Act*. I did not consider the complainant's argument persuasive and, in any event, the constitutionality of a statutory provision is presumed until otherwise determined by a court of competent jurisdiction.

I did not believe that the complainant had been treated unfairly. He did not suffer the effect of his 30-day suspension in the State of Washington, because he had returned to British Columbia before that suspension took effect. (CS 82-157)

[redacted]

[illegible]

This here rig is non-conforming

The driver of a truck/trailer combination complained that a weigh station attendant had pulled him off the road on the grounds that his rig did not conform to government regulations. After operating the unit for about two years, my complainant now found out that his vehicle combination was too long to be considered a certain type, known in the industry as an "A-train", and slightly too short to be considered a "B-train". He could convert to one or the other, but the cost would be either some $2,500 or $11,000. My complainant was told that changes in the regulations were being considered, but that, in the meantime, he was not allowed to operate the rig. He said he did not understand why he was singled out. Other drivers, he said, were also driving non-conforming vehicles.

My assistant discussed the matter with the Commercial Transport Division of the Motor Vehicle Department in Victoria. It was apparent that the makeup of the rig had something to do with its classification, as well as its length. Those allowed to operate outside regulations, were mainly auto carriers, treated as exceptions across the country. Length also was not the only criterion used. My assistant was informed that the regulations were indeed under revision, but that my complainant would have to wait until the changes became law since they could be amended or even rejected by the Minister or the Cabinet. On the other hand, the Commercial Transport Division was concerned that the man had already been operating outside the law for two years. It felt that he should have made sure his rig's length and makeup were correct. My assistant was also told that a temporary permit would not be issued, since they were given only for special, one-time cases, such as when a beam for a bridge or a mobile home had to be transported.

My office kept in touch with the Director of the Compliance and Standards Branch of the Commercial Transport Division, and was finally told that the changes had been approved by the Minister and were awaiting final approval by his Cabinet colleagues. At this stage, the Director agreed to issue a temporary permit enabling my complainant to drive his vehicle again.

Issuance of the final permit had to await approval by the Cabinet, which did not meet until after Christmas. My complainant agreed that the resolution of his problem was a nice Christmas present. (CS 82-158)

And finally a complaint which does not fit into any specific category, but is interesting enough to warrant inclusion in the Annual Report.

Divided town remains together

The railway is the focal point of life in Birch Island, a small community in the Interior of B.C. Birch Island is split by the railway, with elementary school and shopping centre services on one side of the track and a subdivision on the other.

For more than 50 years, residents used a private crossing that joined the houses with the town centre. During July, 1982, the railway posted a notice in the town, informing residents that the railway was going to tear up the crossing within a month. This closure meant that children attending the school would have to walk an additional mile, past a garbage dump which was a favourite spot for the local bears.

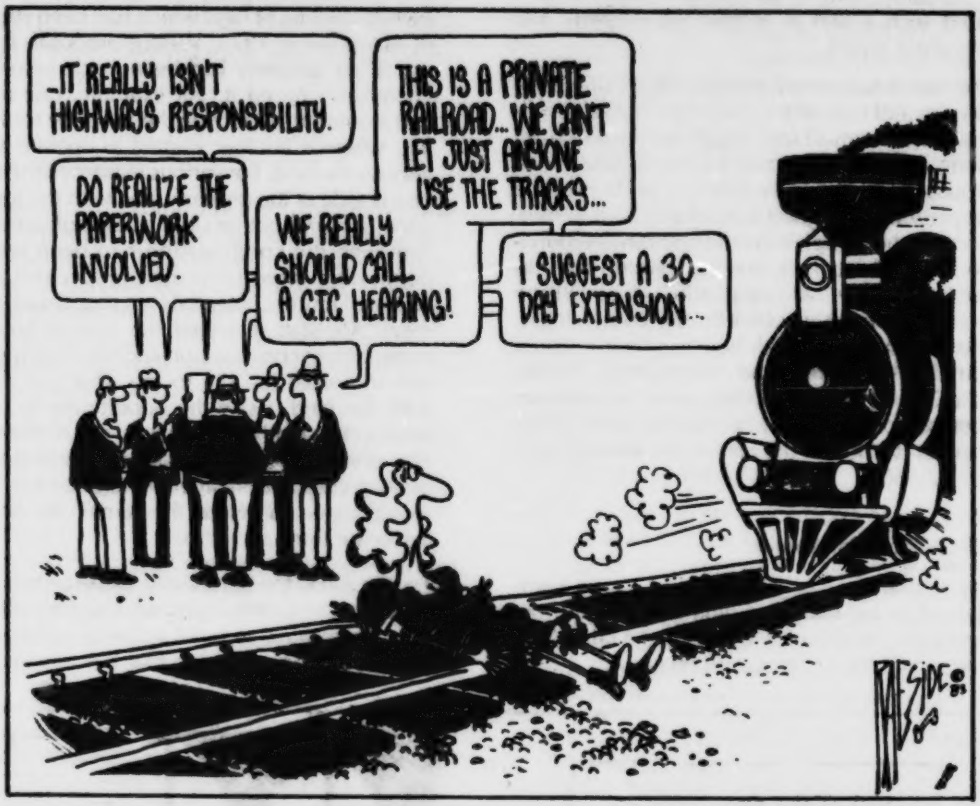
The problem was triggered several months earlier, when a school superintendent informed the railway that children crossing the track may be exposed to danger. He suggested the railway consider building a pedestrian underpass.

The railway wrote to the Canadian Transport Commission, which must approve changes in crossings. The Ministry of Transportation and Highways was also notified because it often maintains the public crossings. The Ministry decided it was not its responsibility to provide a public crossing. The railway, however, was concerned that the public was using a private crossing which should be closed.

The parties agreed to a 30-day extension to give the Canadian Transport Commission an opportunity to investigate the situation.

The Commission recommended that the railway either allow the situation to continue or that Highways take responsibility for the crossing.

My complainants appeared satisfied with either solution, and I ended my investigation. (CS 82-159)


..IT REALLY ISN'T HIGHWAYS' RESPONSIBILITY.
DO REALIZE THE PAPERWORK INVOLVED.
WE REALLY SHOULD CALL A C.T.C. HEARING!
THIS IS A PRIVATE RAILROAD... WE CAN'T LET JUST ANYONE USE THE TRACKS...
I SUGGEST A 30-DAY EXTENSION...
RAESIDE 83

BOARDS, COMMISSIONS, TRIBUNALS AND CORPORATIONS

AGRICULTURAL LAND COMMISSION

[redacted]

[redacted]

Wait for fine-tuning

In one case, the Commission refused to allow subdivision of a man's property. The complainant and the Commission both had their agrologist and agricultural economist inspect the property.

These experts arrived at different conclusions. The only way to resolve the dispute was to retain a reputable firm of agricultural consultants. I hired such a firm to inspect the property and prepare a report.

The report supported the findings of the Commission and I found the complaint not substantiated. The consultants suggested subdivision along different lines than the complainant had proposed, on the basis that one portion of the property was not good agricultural land. Unfortunately, the complainant did not want a subdivision along these lines, and the Commission was not, at that time, willing to allow a subdivision along the lines suggested by the complainant. The Commission stated, however, that it would complete its review and "fine-tuning" for the Lake Cowichan area in 1983, and once this has been completed, it may be possible for my complainant to obtain the requested subdivision. (CS 82-160)

A heavenly compromise

The pastor of a congregation in Victoria complained to me that the Commission would not permit his parishioners to construct a church on land which the congregation owned.

On investigation, I discovered that the church owned 2.63 ha of land which had been stripped of its top soil in 1973. Various proposals for the use of the property had been made before the church purchased it. For example, one owner had wanted to subdivide the property for housing, whereas another wanted to operate a piggery on the land. For various reasons, no use had been made of the property, and with the top soil gone, it could not be used as agricultural land. Although the congregation had been refused permission three times before to construct a church, I saw the potential for a negotiated settlement. My staff reviewed the files of both the complainant congregation and the Commission, and inspected the site to see what was wrong with the land. I saw the opportunity to return some of this land to agricultural use, if the members of the church, in exchange for permission to build a church on some of the unusable land, would agree to return the remainder of it to agricultural use.

I suggested to the Commission several innovative ideas and the Commission subsequently allowed the congregation to build a church up to a maximum size, on condition that the remainder of

CHAPTER 96.....
..."LIFE IS FULL OF LITTLE COMPROMISES....
21

the property be converted to agricultural use. The complainant was delighted with the result and further investigation was unnecessary. (CS 82-161)

Not economical

I investigated a complaint from a property owner in Chilliwack, concerning the Commission's refusal to allow subdivision of his 64-acre property into 12 parcels. After investigation, I was not able to substantiate this complaint because the Commission had acted in accordance with its legislated mandate, and there was no evidence of procedural unfairness.

In spite of my conclusion, I was concerned about the plight of this complainant and others, whose land, although included in the Agricultural Land Reserve, could not be farmed economically without costly improvements. For this reason, I proposed that the Commission seek legislative amendments to allow it to retain and use funds realized from the sale of Commission-owned property for the purchase of marginal farming operations.

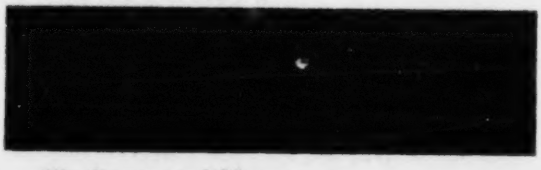
The Commission supported my recommendation and advised me that it had already had discussions with the Minister of Agriculture and Food concerning a plan to re-activate the Land-Acquisition Program by using proceeds from the sale of properties to purchase problematic farmland.

Although in general I am reluctant to propose resolutions to complaints which relate to resource allocation, I decided to make my proposal directly to the Minister of Agriculture and Food. In his response, the Minister referred to several government and Commission policies which were established to reduce the impact on those who felt disadvantaged by having their land placed in the Agricultural Land Reserve. Unfortunately, none of the programs referred to (with the exception of reduced property taxes) applied to the situation of the property owners whose complaints had prompted my proposal. The Minister also stated that the present restraint policy limited the Commission's ability to obtain sufficient funding to purchase land at this time, but that the appropriation to the Commission of additional funding could be reconsidered at some time in the future.

With respect to my specific proposal, the Minister commented that as the Commission generally disposes of its property by way of long-term lease arrangements, the accumulation of funds in this way would be too slow to enable the Commission to purchase marginal farming operations. The Commission itself had not expressed this concern in commenting on my proposal.

In view of the present economic situation, I decided not to pursue the issue. I am still concerned, however, about the situation of landowners whose properties are included in the Reserve, but who are unable to earn a livelihood from it. (CS 82-162)

B.C. ASSESSMENT AUTHORITY



Won't anger neighbours

A man complained that his commercial property had been inequitably assessed in comparison with the assessment of other commercial properties in the area.

He had appealed his assessment to both the Court of Revision and the Assessment Appeal Board, but both bodies concluded that his property had been properly assessed. The complainant took the position that if his property was properly assessed, then other comparable properties had been underassessed. Further, he felt that as a result he was required to bear a disproportionate share of the tax burden. The Court of Revision did not agree that the other properties in question were of comparable value and even if it had, the inequity could not have been corrected this way. When the assessment of a property is appealed to the Court of Revision or to the Assessment Appeal Board, these bodies must rule on the assessment of that property—not on the assessment of other properties.

If a property owner feels the assessments of other properties should be changed to be more equitable with his, then he must appeal those other assessments. My complainant indicated that he was unwilling to do this and pointed out that such action would do little to increase his popularity with his neighbours.

While I understood his position, I was unable to substantiate his complaint. (CS 82-163)

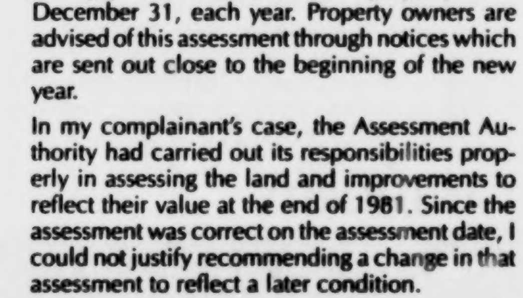
Hey, the business burned down

I received a complaint that the B.C. Assessment Authority had assessed business premises which had burned to the ground. The property had been assessed as of December 31, 1981, and had been destroyed by fire in February 1982. Since the taxation of a property follows from its assessment, the property owner felt that the Assessment Authority should correct its records to reflect the decreased value of the improvements.

Under the *Assessment Act*, the Assessment Authority places a value on each property as of December 31, each year. Property owners are advised of this assessment through notices which are sent out close to the beginning of the new year.

In my complainant's case, the Assessment Authority had carried out its responsibilities properly in assessing the land and improvements to reflect their value at the end of 1981. Since the assessment was correct on the assessment date, I could not justify recommending a change in that assessment to reflect a later condition.

The choice of a specific assessment date results in problems for persons in situations such as that of my complainant, but could confer benefits on others, such as those who erect buildings at the beginning of a new year. I concluded that the legislation itself was not unfair, and the Assessment Authority had not treated my complainant unfairly. (CS 82-164)



More than a business

A complainant said that the B.C. Assessment Authority had erred in the classification of a piece of property with regard to the proportions used for residential and commercial purposes. The property in question is in a residential area and almost all of it is used for residential purposes. One small section of the lot, however, houses a garage in which motor vehicles are repaired. Until 1980, about 10 percent of the total actual value of the land had been assessed as "Business/Other", with the remaining 90 percent assessed as "Residential". In 1980 and subsequent years, these proportions were reversed so that 90 percent of the land was classified as "Business/Other" and 10 percent as "Residential".

My investigator contacted the area assessor and provided him with copies of assessment notices for the years 1979-1982 and with a sketch of the lot and buildings. The area assessor reviewed this material and his own files, and confirmed that an error had been made sometime between the 1979 and 1980 assessments. The assessor recalculated the land values for the years 1980, 1981 and 1982, and arranged to have the 1982 assessment roll revised to reflect the new values. This reversal, coupled with an adjustment which had been applied to residential land values in this area, resulted in a decrease of more than $13,000.00 in the total assessed value of the complainant's property for 1982. (CS 82-165)

Classification changed

My complainants had developed a campground, and 1982 was their first full year of operation. The Assessment Authority had classified their campground as "Business/Other". Sometime during 1982, however, the complainants learned that their campground would probably be eligible for a different classification—"Seasonal/Recreational"—which would subsequently result in a lower rate for their property taxes. The Assessment Authority gave them an application form to apply for the new classification for 1983, but refused to change the classification for 1982.

The area assessor told me that the complainants had not completed an application form for 1982, and for that reason, he was unable to change the 1982 classification. Neither the legislation nor the regulations specify a time limit for such applications, so my complainants completed and submitted an application form for 1982. The assessor reviewed it, said that they were eligible for the "Seasonal/Recreational" classification, and agreed to recommend a supplemental assessment to amend their 1982 assessment classificaton. He also agreed to advise the Surveyor o Taxes of the change so that an adjustment could be made in their tax account. (CS 82-166)

Stored mobile home

A woman complained that she had been unfairly assessed on a mobile home which she had stored on someone else's property. The mobile home was not connected to water, hydro or sewage systems, and it had never been lived in, at least not at that location. However, she had received a 1982 assessment notice setting the value of the mobile home as an improvement at $15,700.

The area assessor told my investigator that an appraiser had visited the site and had thought that the mobile home was occupied. He confirmed that if the mobile home was simply being stored on the site, and not lived in, nor connected to water, sewage or hydro systems, it probably should not have been considered an improvement. He agreed that if the complainant could provide him with a notarized statement attesting to the state of the mobile home at the beginning of the year, he would ask the Assessment Commissioner to issue a supplementary assessment to correct the original assessment. My complainant was able to do this. (CS 82-167)

That's not even our land

A couple complained to me about a delay on the part of the Assessment Authority in advising a municipality of an error in their assessment. The couple had appealed the assessment of their home to the Court of Revision and had obtained an appraisal of the property as part of their appeal. As a result of the appraisal, they learned that for the past four years, the Assessment Authority had included in their assessment an area of land which the couple did not own.

The Assessment Authority confirmed that the property had been inaccurately assessed for a number of years. My complainants needed a letter from the Assessment Authority advising their municipality of the error so that they could attempt to obtain a credit for property taxes which had been incorrectly paid in the past. They asked the Assessment Authority for this letter several times but did not get it.

When my staff contacted the area assessor, the letter was sent to the complainants soon after. (CS 82-168)

The later the better

A woman complained that her hand-delivered appeal notice was rejected because it was late, while her neighbour's notice was accepted, although it had been mailed and arrived two days after hers.

The legislation specifies that appeal notices must be delivered to the assessor no later than January 20, but does not specify an hour. In these circumstances, the *Interpretation Act* would apply, and it states that the term "deliver" "includes mail to or leave with a person, or deposit in a person's mail box or receptacle at the person's residence or place of business".

This meant that as long as my complainant's appeal was deposited through the assessor's door by midnight January 20, it should have been accepted. The decision whether or not to accept the appeal is made by the Court of Revision. The assessor advised the Court that the appeal had not been delivered by 10:45 p.m. on January 20, and recommended that it be rejected as late; the Court agreed.

My complainant could have appealed this decision to the Assessment Appeal Board, but did not do so. Because of this, and because her primary interest was in having the matter clarified for future reference, I did not investigate her complaint further. (CS 82-169)

©RAESIDE
GOOD LORD! THIS MUMMY IS BOUND WITH RED TAPE!
GAD, CARSTAIRS... WE MUST HAVE STUMBLED ON AN ANCIENT PROVINCIAL GOVERNMENT MINISTRY!

Assessment correct

A woman complained that the B.C. Assessment Authority had unfairly attempted to divide her property into two lots. The Assessment Authority had advised my complainant that it intended to start sending her two assessment notices each year because her property included two legally defined parcels of land. The woman stated that she had owned her land since 1936 and that it had always been held under one title.

The Assessment Authority, however, had determined that her lot actually consisted of two parcels of land covered by the one title. The Assessment Authority is required to assess each parcel of land separately, unless a building extends over the boundary of the parcels. The Assessment Authority had recently become aware that more than one parcel of land was involved and had advised my complainant of its intention to correct its records in this respect.

I concluded that the Assessment Authority was acting properly in providing separate assessments for each parcel. (CS 82-170)

Access denied

A woman complained that the Assessment Authority had refused her access to information contained in Assessment Authority records about her property. The complainant had been at home when the appraiser inspected the property. She stated that she later phoned the Assessment Authority and requested a copy of the report but was turned down.

By regulation and by Assessment Authority policy, property owners are entitled to access to information about their property recorded by the Authority. Officials at the area assessor's office said they were unaware of any requests the complainant had made for this information.

They said my complainant would be given access to the required information, if she visited the office and provided proof of identity, which resolved this particular problem. Since then, however, other cases have come to my attention in which property owners were denied access to information about their properties. I am monitoring these closely to make sure that Assessment Authority staff respect this right of property owners' to this information. (CS 82-171)

Request fair

A man complained to me that the Assessment Authority required him to provide information on revenues and expenses associated with his rental property. The Assessment Authority had not required such information in the past, and he felt they had no right to do so now.

The Assessment Authority must determine the actual value of land and improvements each year. To make this determination, the Authority may consider factors such as present use, location, cost, revenue or rental value, etc. The *Assessment Act* also requires individuals to provide Assessment Authority officials with information they need to perform their duties. I advised the complainant that the Assessment Authority had the legal right to consider rental value when assessing his property, and to ask him for the necessary information. I did not consider the Authority's request to be unreasonable or unfair. (CS 82-172)

[illegible]

Tapes tell all

A man complained to me that the Assessment Appeal Board had not given him a full opportunity to present his case, and had reached a decision which was not based on the evidence presented.

To evaluate the Board's treatment of this person, my investigator listened to tape recordings of the appeal. Three issues had been appealed, and in each case, the complainant felt that the Board had not paid attention to what he had said or had not allowed him to present his case fully.

The tapes did not confirm the complainant's position. In each case, the complainant had presented his evidence and had been given an opportunity to make further comments before the Board went on to the next issue. I also concluded that the decision made by the Board was supported by the information presented at the appeal, and did not substantiate the complaint. (CS 82-173)

[illegible]

B.C. FERRY CORPORATION

[illegible]

[illegible]

Three lonely days

I received a complaint from a woman who was stranded in Port Hardy because she received wrong information from the B.C. Ferry Corporation. The woman intended to travel from Victoria to Hazelton. She planned to take the ferry from Port Hardy to Prince Rupert. Before departing from Victoria, she phoned B.C. Ferries for information about her planned trip. She says she was told to take a bus at 8 o'clock in the morning which would get to Port Hardy late that afternoon, in time to catch the ferry to Prince Rupert. The woman told my investigator she made it very clear at the time that she intended to board the ferry the same night. She was told that no reservation was necessary and was informed about the fare. Apparently, no mention was made of a possible overnight stay in Port Hardy.

When she arrived in Port Hardy, she found out that the ferry had left at noon, and that she would have to stay in Port Hardy for three days. Naturally, she was quite distressed. She said she had no money to stay in Port Hardy. She had to be in Prince Rupert in time for a showing of her art works. As it turned out, she had to cancel her show; she also had to sell some of the paintings she had with her at a discount price so she could proceed from Port Hardy.

She complained to B.C. Ferries, estimating her loss at about $150. She wanted to be reimbursed for that amount. B.C. Ferries told her it had investigated her claim and decided to reject it.

When I began my investigation, I was referred to a provision in Tariff #1, issued by the British Columbia Ferry Corporation on November 6, 1980. The provision states that the Corporation shall not be liable for any loss, damage, injury, injury causing death, illness or expense incurred by any person who is given any misinformation with regard to sailing times. I asked B.C. Ferries to provide me with a copy of the full document and with background information on its legal status. I also asked how the Corporation acquaints the public with the tariff. Furthermore, I asked for details on the investigation it had conducted into the complaint. I never obtained any of the information I requested.

Instead, the Corporation mailed the complainant a cheque in the amount of $150. (CS 82-174)

Clean slate— but no job!

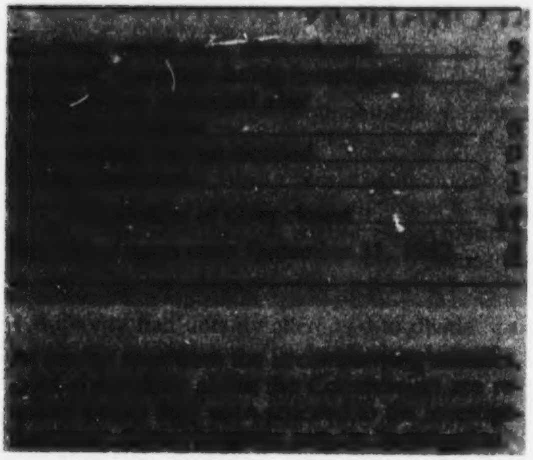
A man complained that he could not find work with the B.C. Ferry Corporation because he was blacklisted. He had been employed with the Corporation from 1972 until he was laid off in 1976. His later efforts to be rehired by the Corporation were not successful.

The Corporation informed me that the complainant, at some time in the past, had publicly criticized his employer; there was no proof, however, that he had actually done so, nor would that have been a reason to refuse employment.

I was not able to get the complainant a job with the B.C. Ferry Corporation but I recommended that the complainant's personnel file be cleared of any reference to allegations about critical comments he allegedly made. I also recommended that the complainant, should he again apply for a job with B.C. Ferry, be considered solely on the basis of his qualifications, without regard to incidents that may or may not have taken place many years ago.

The Corporation accepted my recommendations and informed me that, in the future, the complainant's application will be considered along with other applications, based on his qualifications. (CS 82-175)

B.C. HOUSING MANAGEMENT COMMISSION



Woman wants suite painted

A woman complained that the Commission had raised the market value of her apartment, had not repainted the place for five years, and had ignored her request for similar accommodation in a different city.

My staff looked into the matter and found that the woman had not been singled out for reappraisal of her apartment. All similar suites had been appraised at roughly the same market value.

B.C. Housing officials also said that they had received no request from the woman to paint her suite. They said they normally had all suites repainted every eight years, but added that this policy was flexible.

Regarding the woman's request for accommodation in a different city, B.C. Housing officials informed my staff that her need for transfer was not acute enough to get her on the priority list.

Points are awarded to an applicant according to various areas of need. Generally, a higher point score is awarded applicants who lack assets, are presently in poor accommodation, or have been given notice to vacate.

I provided the woman with information about the S.A.F.E.R. program, suggesting that she seek private accommodation in her new location, or apply to one of the non-profit housing societies. (CS 82-176)

Declined, withdrawn, discontinued	[illegible]
Resolved/corrected during investigation	[illegible]
Substantiated, corrected after	
recommendation	1
Substantiated but not rectified	1
Not substantiated	12
Total number of cases closed	[illegible]
Number of cases open December 31, 1982	[illegible]

B.C. Hydro staff have continued to give full co-operation in resolving the complaints which I bring to their attention. During 1982 I received almost three times as many complaints against B.C. Hydro as I did in 1981. Most of them concerned the collection of money.

Of the 135 complaints against B.C. Hydro closed in 1982, some 58 percent concerned disputes over amounts billed, collection of security deposits from businesses and the disconnection and reconnection of electric and gas services.

Because of the general economic climate, many Hydro customers have had difficulty paying their bills. As a result, Hydro credit and collections staff have been faced with increasing demands to be more flexible, reasonable and considerate in attempting to collect money from people who may not have enough to meet all of their basic needs. It is my impression that Hydro staff have, generally, responded quite well to the special needs of customers in financial trouble.

In spite of these efforts, however, I continue to receive complaints which suggest that the collection action taken by some Hydro staff is not based on a thoughtful consideration of the position of the customer and the alternatives available.

In the following two cases, Hydro customers had their power disconnected as a result of errors which could have been prevented.

Proof of payment ignored

A resident of a small community called my office to complain that Hydro had just disconnected his electric service because payment for his last bill had not been received. The complainant had the receipt for a money order to Hydro, proving that payment had been made, but Hydro collections staff ignored his claim and proceeded with the order to disconnect. The complainant's wife showed the receipt to the Hydro electrician when he came to the house but he disregarded it and proceeded with the disconnection. This happened at the end of September and the complainant pleaded that he had four children living at home who depended on electricity for heating.

My investigator immediately brought the matter to the attention of a senior Hydro staff member for the area who had the power reconnected the same day. The Hydro representative looked into the cause of the problem and acknowledged that both the telephone collections clerk and the field electrician should have known that a receipt for a money order payable to B.C. Hydro is proof of payment and that payment is virtually guaranteed, even if the original money order is lost in the mail.

The Hydro representative subsequently confirmed that he advised all his staff of the proper procedures to avoid similar unwarranted disconnections in the future. (CS 82-177)

Unexpected disconnection

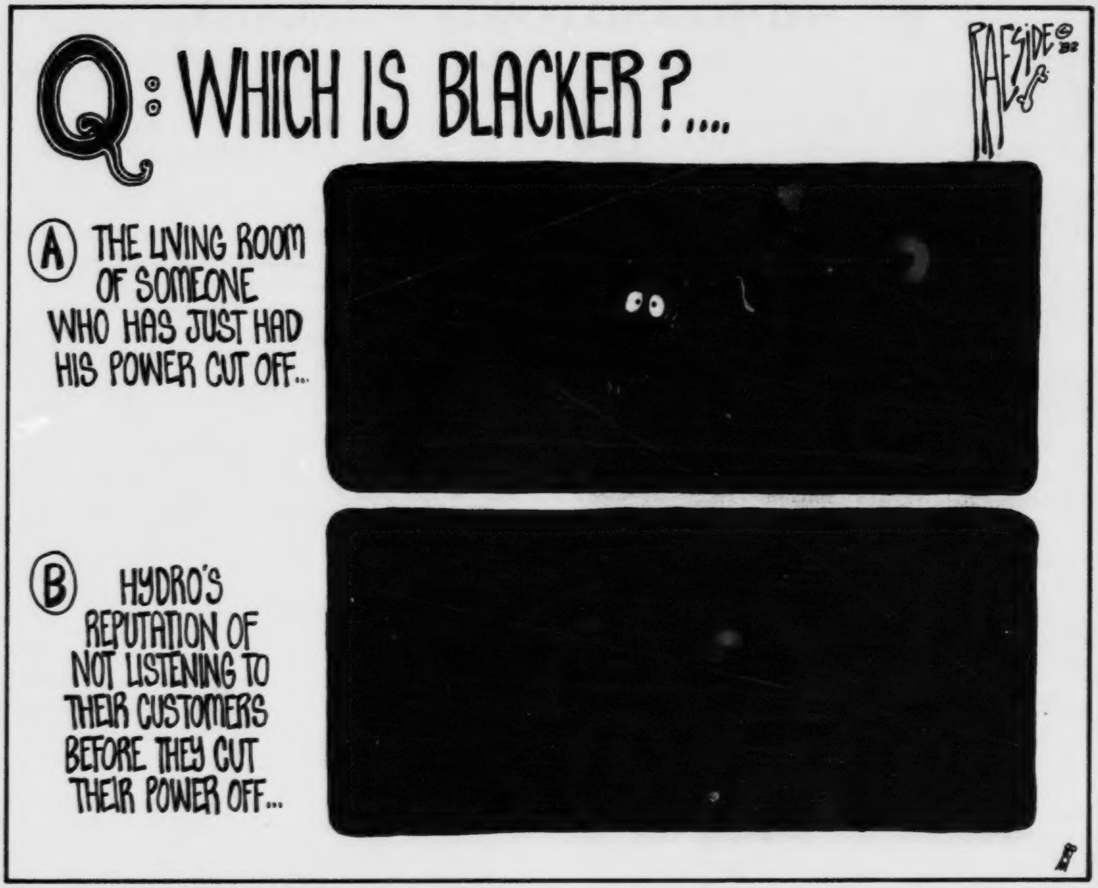
A woman phoned my office to complain that Hydro had just disconnected her power without notice. She said she had called the Hydro collections clerk to explain that an error had been made, but the clerk would not listen.

There was no question that the complainant's account was in arrears. About three months earlier, the complainant's husband had suffered a business failure and, because he had personally guaranteed the payment of the commercial account, a Hydro debt of more than $6,500 was transferred to his residential account.

When Hydro threatened to disconnect the electric service to his home, unless the arrears were paid in full, he asked me for assistance. Since the payment record on his residential account was excellent, a senior Hydro staff supervisor readily agreed to withdraw the threat of disconnection and to work out a repayment schedule within the complainant's means.

Instructions concerning this arrangement were made on Hydro's collection file but this note was apparently ignored by another Hydro employee who initiated disconnection action without further notification to the complainant. When my investigator questioned the supervisor about the matter, he acknowledged the error and took immediate steps to restore the complainant's power. (CS 82-178)

Whenever it appears that Hydro personnel have been unreasonable or unfair in their attempts to collect an overdue account, supervisory staff are usually willing to negotiate a payment plan which


Q: WHICH IS BLACKER?....
RAESIDE © 82
(A) THE LIVING ROOM OF SOMEONE WHO HAS JUST HAD HIS POWER CUT OFF...
(B) HYDRO'S REPUTATION OF NOT LISTENING TO THEIR CUSTOMERS BEFORE THEY CUT THEIR POWER OFF...

better suits the customer's ability to pay. For this reason, I often refer complainants back to the supervisory level of Hydro with a recommendation to propose a more manageable payment arrangement. When such attempts fail—perhaps due to a lack of patience or interest, or an over-reliance on the ultimate weapon of disconnection on the part of some collections personnel—I have no choice but to deal with the matter directly.

The following three cases illustrate the type of complaint which I think could have been prevented, had Hydro staff taken greater responsibility for working out a mutually satisfactory agreement when the problem was first brought to their attention.

Refusal to negotiate

A businessman shared the Hydro electric meter with another company which had assumed responsibility for paying the account. When the other company went out of business, the account was in arrears about $3,000 which triggered Hydro's collection procedure, including the threat of disconnection. When the complainant tried to resolve the matter with Hydro to prevent the disconnection of power to his own establishment, he was met with an inflexible refusal to accept anything but full and immediate payment. After five days of effort without finding any Hydro staff willing to assist in resolving the matter, the complainant asked for my help the day before the power was to be disconnected.

My investigator brought the matter to the attention of a senior manager in Hydro who was able to negotiate a suitable payment arrangement with the complainant and his landlord. (CS 82-179)

Security deposit threatens business

The owner of a small restaurant complained that B.C. Hydro had threatened to disconnect service to her premises immediately, unless her existing security deposit of $600 was increased to $3,000. The complainant's dispute with B.C. Hydro over the amount of the deposit had been raging for several weeks. Hydro personnel had already attempted to disconnect the service but were refused access by the complainant. The complainant claimed that she simply could not pay the additional $2,400 immediately, and that if Hydro insisted on that amount as the only means to avoid disconnection, it would mean the end of her business.

Since the complainant's Hydro account had fallen into arrears on several occasions in previous months, B.C. Hydro appeared justified in increasing the security deposit to reflect rising utility rates and the complainant's consumption. B.C. Hydro must be given an opportunity to protect itself against loss in the event of bankruptcy. However, B.C. Hydro was taking a somewhat inflexible approach to the matter and seemed to be unable or unwilling to work out a mutually satisfactory arrangement with the complainant.

After inquiries from my office, it was discovered that, according to Hydro policy, the complainant was entitled to switch to a monthly billing period from a bi-monthly period which in effect would allow a reduction in the required security deposit from $3,000 to $2,000. Hydro staff further agreed to let the complainant bring the security deposit up to date over a four-month period.

While the complainant was still unhappy about having to pay any security deposit at all, the new payment arrangement was at least financially manageable. (CS 82-180)

Unmanageable payment demand

A man who unexpectedly found himself unemployed and in financial difficulty, complained that he was unable to meet Hydro's request to pay arrears of more than $700 at $100 per month, in addition to his current billing. The arrears represented the estimated value of gas consumed over one and a half years and were charged to the complainant's account, after Hydro discovered that his gas meter had not been registering for that period. The complainant did not dispute the amount billed—only the rate of payment requested.

After discussing the details of the complainant's financial situation with my investigator, the Hydro representative agreed to accept payment of the $700 at the rate of $20 per month for six months (during the high winter billing period), followed by $80 per month until fully paid. One of the principles considered in arriving at this extended payment plan, was that a customer who has been under-billed due to Hydro's error, should be given the same time to repay the arrears as it took Hydro to discover the error. (CS 82-181)

Most Hydro customers who are unable or unwilling to keep their accounts up to date, are eventually [illegible] With respect to [illegible] accounts of landlords of residential premises, however, B.C. Hydro has a written policy which requires collections personnel to notify the Rentalsman before disconnecting electric or gas services which may affect tenants whose rent includes the provision of those services. Since the continuation of those services is protected under the *Residential Tenancy Act* (the Rentalsman may order that sufficient rent be sent directly to him until the Hydro account is paid), no tenant in this situation should ever have to suffer the inconvenience of service disconnection. Nevertheless, proper procedures are not always followed, as illustrated by the two cases below.

Unfamiliar with policy

A tenant whose electric service had just been disconnected, complained that he should not suffer for his landlord's failure to pay the Hydro account. His tenancy agreement specified that his landlord was responsible for paying Hydro. He advised Hydro staff of this fact, but they disconnected the service anyway.

During my investigation, it became apparent that the Hydro staff member responsible was not familiar with Hydro's policy requiring notification of the Rentalsman if a tenant's services may be disconnected because the landlord failed to maintain his account. My investigator suggested that this policy should have been followed in this case, especially since the tenant had advised Hydro of the nature of the tenancy agreement prior to disconnection. On this basis, Hydro immediately reconnected the complainant's power and proceeded to explore other means of collecting the arrears from the landlord. (CS 82-182)

Disconnection without notice

The tenants of an apartment building in a Lower Mainland community complained that B.C. Hydro had disconnected their gas service without notifying them. Our investigation revealed that the landlord was responsible for paying utilities, that he had not kept his payments up to date and that Hydro had advised him of the disconnection. The tenants, however, had not been warned of the disconnection and had not been advised in advance of their right to apply to the Rentalsman for an order redirecting their rent to ensure maintenance of service.

B.C. Hydro's policy is to notify the Rentalsman if any gas or power is to be cut in any multiple unit premises where the landlord is responsible for the Hydro account. In the course of examining this complaint, it became clear that Hydro had not applied this procedure for the complainants' type of dwelling, i.e. Hydro's "rooming house" category, which includes houses with several self-contained suites.

B.C. Hydro acknowledged the source of the problem and undertook to remind collections staff that rooming houses and houses converted to self-contained suites were included with other multiple unit residences, with respect to procedures for notifying the Rentalsman. (CS 82-183)

One of the primary functions of B.C. Hydro's Properties Division is to acquire land for its various energy projects and distribution systems. The process of negotiating with Hydro can become complicated and can cause landowners considerable stress as the following two cases illustrate.

Access to Hydro's appraisal

The owners of a small nursery complained that B.C. Hydro had unfairly denied them access to an appraisal report concerning the amount of compensation which might be paid to them for the purchase of a transmission line easement through their property and for having to relocate to a different part of the property.

Relocation requirements included moving greenhouses, a potting shed, a large amount of nursery stock and the family home. The complainants considered it crucial for the survival of their business that the relocation be carefully planned well in advance but over a period of several months they had been unable to obtain sufficiently detailed information from Hydro to facilitate such planning. The complainants pointed out that crops must be planned two to three years in advance and that the movement of some plants can only be done at certain times of the year.

Even though Hydro representatives had assured them that they would be compensated for any damages or losses, they still feared that Hydro did not understand the long-term cost implications for their business if their current stock or crop planning were in any way affected.

The complainants claimed that their ability to negotiate a realistic compensation payment and relocation plan with Hydro depended on their direct access to the itemized appraisal prepared for Hydro by an independent appraiser and they believed that they would be given such access. When the complainants attempted to obtain a copy, however, Hydro refused and said that a lump sum payment would probably be offered. Since the complainants needed a detailed itemized appraisal to ensure that the costs of the relocation were being accurately calculated, they would now be forced to hire yet another appraiser on their own to counter Hydro's proposal.

In an effort to resolve the matter, my investigator discussed the complainants' concerns with Hydro's Field Supervisor for the project who, fortunately, happened to have a farming background and seemed to appreciate the nature of the problem. After considering my investigator's request, he agreed to deal with the complainants personally and said he was quite open to negotiating the timing of the relocation to accommodate the complainants' needs. He also agreed to discuss the details of the appraisal with the complainants to ensure that a fair settlement was reached.

The complainants were most satisfied with Hydro's responsiveness to our requests and now feel that they were treated fairly in the matter. (CS 82-184)

A victim of load forecast

A man who lived next to a Hydro substation complained that Hydro's delay in deciding whether or not to buy his property was causing him considerable personal inconvenience.

The complainant had nearly completed an extension to his house when he was approached by a Hydro representative who informed him of Hydro's intention to purchase his property for the purpose of expanding the neighbouring substation. The complainant was surprised to hear this because he had contacted Hydro before beginning his construction project and was told that Hydro had no plans for expansion and he should go ahead and build. To complicate matters, shortly after the Hydro representative began negotiations for purchase of the property, Hydro advised that the project may be delayed because of Hydro's cutbacks.

The man complained to me after waiting several weeks with no firm response from Hydro. Reluctantly, he put the completion of his house extension on "hold" on the basis of his understanding of advice from Hydro's land representative that an answer might be forthcoming in a few more weeks.

My investigation revealed that the complainant was the unfortunate victim of Hydro's modified electrical load forecasts which began affecting Hydro's expansion plans half-way through negotiations with the complainant. At my request, Hydro's Properties Division gave priority to clarifying the future of the substation expansion plans and ultimately wrote an apology and explanation to the complainant. (CS 82-185)

I.C.B.C. — A YEAR OF CHANGE

[illegible]

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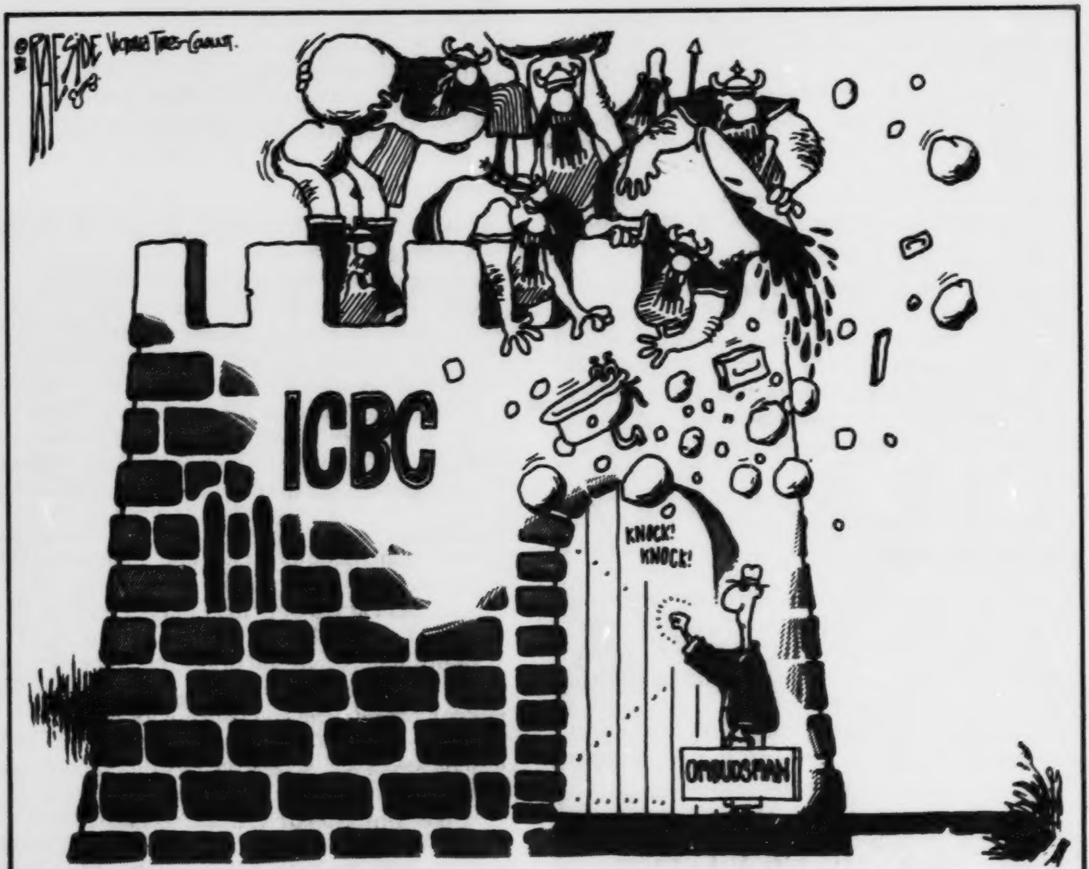

©RAESIDE Victoria Times-Colonist
ICBC
KNOCK! KNOCK!
OMBUDSMAN

Many complaints [illegible] rance on the part of policy holders, [illegible] their agents and [illegible] blame for this situation rests with policy holders who are not familiar [illegible] terms of the "Autoplan" booklet. On the other hand, I have made several recommendations to I.C.B.C. concerning the provision of information to policy holders and claimants.

I am happy to report that I.C.B.C.'s attitude towards its role as a government agency serving the public has improved in 1982. One example of this attitude shift is the publication by I.C.B.C. of a series of pamphlets designed to provide information to the public on topics such as hit and run accidents, and entitlement to "no fault" benefits.

. . . BUT COMPLAINTS ARE SKYROCKETING

During the past year, I dealt with more complaints against I.C.B.C. than against any other government agency, ministry or tribunal. My office was able to deal with 791 complaints, and at year's end, I had 219 open and ongoing investigations.

Of the completed cases, 37 percent were either substantiated or resolved during the investigation. Complainants were referred to other remedies in 42 percent of the cases. Most of these latter complaints involved disputed liability or [illegible] and complainants were informed of their rights to go to court or arbitration. In 21 percent of the cases, the complaints were not substantiated and I found the Corporation had acted properly.

The strike and its aftermath account for some of the increase. For a number of reasons [illegible] the primary complaint-handling mechanism for disputes against I.C.B.C. This past year has seen a major investment of my time in the investigation of I.C.B.C. cases. This year, I intend to press I.C.B.C. to work harder trying to resolve its own complaints at the first level.

STRIKE AFTERMATH

In 1981 I.C.B.C. had a five-month strike, and it was no surprise that in 1982, I received a large number of strike-related complaints. I.C.B.C. [illegible] often to deny responsibility for [illegible] suffered as a result of the [illegible] I.C.B.C. said it could not be solely blamed for [illegible] suffered as a result of the [illegible] dispute.

[illegible]

One result of the strike was that I.C.B.C. had not collected a number of [illegible]

[illegible] I.C.B.C. [illegible]

[illegible]

Following [illegible] I.C.B.C., and the [illegible] Corporation's [illegible] I.C.B.C. [illegible] 15, 1982, the date by which policy holders would pay their outstanding [illegible] January [illegible], 1983, [illegible]

Pay up or walk

One case in which I.C.B.C. did acknowledge its responsibility, involved a man whose car was damaged a year before the strike took place. He owed money to the Corporation, and I.C.B.C. took the position that it would not pay for repairs until he had paid his debt. Our complainant paid his debt. Soon after, I.C.B.C. went on strike, and he was unable to have his car repaired. When he approached the Corporation after the strike, he was told that his limitation period had expired, and that I.C.B.C. would not pay for repairs to his car.

I found this decision unjust and oppressive. The Corporation's strike was the prime reason repairs were not carried out, and I did not feel that this individual should lose his right to claim against his insurer. As a result of my recommendation, the Corporation assumed full responsibility for compensating the complainant for repairs to his car. I was particularly interested in this because it indicated a willingness on the Corporation's part to assume responsibility for the results of the strike. Unfortunately, more recently, I.C.B.C! has reverted to its original position and is denying any responsibility for the results of the strike. By year's end several important cases on this issue remained unresolved. (CS 82-186) [illegible] general, the recommendations which I have made to I.C.B.C., concerning procedural changes, have been accepted and implemented—in some cases readily, and in others only after lengthy correspondence. The following are some cases in which I have been successful in convincing I.C.B.C. to improve its procedures:

Denial without reasons

I received a complaint from a man who had made a claim to I.C.B.C. for the theft of his car. His claim was eventually denied by I.C.B.C., but no reasons were given in the letter of denial he received. After investigation, I concluded that I.C.B.C. had failed to provide adequate reasons to the claimant for the denial of his claim, and I recommended that policy holders whose claims are under investigation be notified of this fact within 30 days of I.C.B.C.'s receipt of their claim. In addition, I recommended that a letter be sent to the policy holders within 60 days of the claim, explaining why a claim is denied, and that if the decision cannot be made within 60 days, the Corporation write to the insured and explain the reasons for the delay. These changes have now been implemented by I.C.B.C. (CS 82-187)

NO-FAULT BENEFITS

Procedural fairness requires that individuals entitled to benefits be informed of their entitlement, and also be informed of the reasons when their entitlement is terminated. Two recommendations I am presently pursuing with I.C.B.C. illustrate this principle. In the first case, I have recommended to I.C.B.C. that if a claimant is entitled to no-fault or accident benefits, this information should be supplied to the claimant either at the initial interview with an adjuster or, alternatively, in written form along with the I.C.B.C. pamphlet concerning accident benefits.

The second recommendation I have made is that claimants who have been injured in motor vehicle [illegible]

[illegible] payment of accident benefits and that these guidelines contain specific references to the types of expenses which will be paid for by the Corporation. Although in response to my report, the Corporation agreed to have its Rehabilitation Department prepare a report to be submitted to the Insurance (Motor Vehicle) Act Committee with a view to incorporating any recommendations in the Insurance (Motor Vehicle) Act Regulations, I was happy to see that the 1982 amendments to the Regulations set out the specific rehabilitation benefits which will be paid by the Corporation.

Time to think

In my view, it is crucial that claimants be given a reasonable length of time in which to consider an offer of settlement for injuries. A woman complained that she had been given only one day to consider a settlement offer. I recommended to I.C.B.C. that at least 10 days be allowed in all cases to provide claimants with an opportunity to consider the offer and seek legal advice, if desired. This recommendation has also been accepted but not yet implemented by I.C.B.C. (CS 82-188)

Accounting information

Another example of inadequate provision of information to claimants is the complaint from a man who was confused about the amount of money I.C.B.C. had paid out on his account, and about the amount of money still available to him under his no-fault benefits for rehabilitation and medical expenses. It is important that a claimant know the amount which has been spent to date because there is a ceiling on benefits payable. I am currently discussing with I.C.B.C. the possibility of providing to claimants, on a routine basis, up-to-date accounting information. (CS 82-189)

Unauthorized disposal

A woman complained to me that I.C.B.C. had disposed of her vehicle without her authorization. On investigation my staff discovered that the signature which appeared on the salvage disposal form was not the signature of the registered owner. It was, in fact, the signature of the adjuster. Although I.C.B.C. stated that telephone authorization had been obtained for the disposal of the car, I was concerned about the potential for abuse of this practice, and I proposed that the

Corporation instruct its adjusters to note both in their file and on the salvage disposal form the fact that telephone authorization has been obtained. I.C.B.C. subsequently issued a bulletin to this effect. (CS 82-190)

Witness statements

I received a number of complaints indicating that the Corporation did not, in all cases, accept statements from all of the witnesses who were passengers in vehicles involved in collisions. This omission led to complaints that adjusters were making liability decisions without first obtaining all relevant evidence. At my suggestion, I.C.B.C. issued a Claims Bulletin which was distributed to all adjusters, emphasizing that the names of all witnesses to accidents should be recorded and that statements should be taken if the accident is in any way contentious. (CS 82-191)

[redacted]

Handicapped driver gets discount

In one case, a handicapped man complained to me about I.C.B.C.'s refusal to give him a handicapped driver discount.

One section of the Insurance (Motor Vehicle) Act Regulation stated that handicapped persons will receive a discount if they are also entitled to a discount under the *Gasoline Tax Act*. Another section of the Regulation listed three eligibility criteria for receipt of a handicapped driver discount, but I found that these criteria were different from those in the *Gasoline Tax Act*. The result of this difference was that two categories of handicapped people were not entitled to discounts.

I concluded that I.C.B.C.'s criteria improperly discriminated between categories of handicapped people and recommended that the relevant Regulation be amended to include all of the categories of handicapped persons listed in the *Gasoline Tax Act*. I.C.B.C. accepted my recommendation and the man who had complained to me is now entitled to receive a handicapped driver discount. The regulatory change has been made. (CS 82-192)

Senior cyclists get grant

In the second case, my complainant was a man over sixty-five years of age who regularly rode his motorcycle. He complained that I.C.B.C. did not offer senior citizen grants to seniors who were the owners and principal operators of motorcycles, although senior citizens who drove cars were entitled to the discount. Corporation officials told my investigator that I.C.B.C. had changed its mind and would allow the complainant's discount, and that eligible motorcyclists could apply for the seniors' grants individually. I suggested that the Corporation amend its Autoplan booklet to specify that senior motorcyclists, whose vehicles are insured for pleasure use, qualify for the grant. (CS 82-193)

SENIORS' GRANT YES!

[redacted]

Children's rights violated

One complaint concerned the questionable conduct of a private investigator hired by I.C.B.C. Investigating the extent of an injured driver's disability, the investigator trailed the claimant's son in a school bus to the next town one winter's day. He spoke to the driver of the bus and asked to speak to the boy. The youth got off the bus and the two had a conversation by the side of the road, as the other students disembarked. According to the claimant, his son was highly embarrassed at being singled out in this fashion before his peers. The claimant was outraged that the investigator would try to obtain information from a teenager in this way.

A second related situation involved I.C.B.C. staff taking witness statements from two youths whose parents were not present. The incident concerned the theft of the family car, and the children were asked questions which could have had the effect of implicating the parents in that theft.

An adult can handle himself or herself more readily than can a child, when confronted by apparent authority. A minor is more vulnerable, less likely to be aware of the rights he or she may have, and is more inclined to defer to the inquisitor. Depending on how the minor reacts, there could also be adverse consequences for the child's relationship with his or her parents. For these reasons, a minor has to be protected in such unequal confrontations.

I decided that the failure to protect the interests of the minor in such circumstances is oppressive because the authority is using its superior position to place the child at an unreasonable disadvantage. I recommended that I.C.B.C. instruct in written form both its hired private investigators and its own staff that, whenever it becomes necessary to interview a minor, the interview be conducted with the consent and in the presence of the minor's parent or guardian, or other responsible adult designated by the parent or guardian.

A corollary of this position would be that a minor should never be asked to sign a document without first having had the opportunity to confer with a parent or guardian who has been fully acquainted with the situation.

By the end of the year, I.C.B.C. had implemented my recommendation by instructing its own staff regarding the procedures to be followed in obtaining evidence from minors. More recently, the Corporation has agreed to send a form letter, embodying this policy, to all private investigators which it hires. (CS 82-194)

Invasion of privacy

A third complaint concerned the gathering and documentation of highly personal information by a private investigator. The complainant had suffered a neck injury in an accident and had made a claim to I.C.B.C. Although she had not commenced legal action, the Corporation hired a private investigator to determine the extent of her injuries and to gather information concerning her sources of income. The private investigator collected a wealth of information on the complainant's personal affairs and received an unauthorized report on the complainant's credit history from a credit reporting agency. The collection of this personal information constituted a serious invasion of the complainant's privacy. Much of the information was also quite irrelevant to her claim. For both these reasons, I felt that such information should not be preserved for posterity on I.C.B.C.'s files.

To prevent the collection of irrelevant information, I was prepared to recommend that the Corporation instruct its private investigators, in writing, delineating the aims and scope of any investigation requested. However, I.C.B.C., on its own initiative, implemented a policy to instruct private investigators in writing, and to provide detailed information concerning the purpose of the private investigation. At a conference, I.C.B.C. informed private investigators of its position on practices such as entrapment and interviewing minors. I applaud this change but it does not go far enough. I have informed the Corporation that I am considering a recommendation that I.C.B.C. inform private investigators in writing of its policies regarding such matters, and that it issue a warning in all its contracts that the Corporation will not be liable to pay the fee of any private investigative firm that commits an infraction of provincial or federal legislation in the course of its investigation. Furthermore, I informed the Corporation that I am considering the recommendation that I.C.B.C. report the infraction of the *Credit Reporting Act* to the Ministry of Consumer and Corporate Affairs. (CS 82-195)

Vandalism by moonlight

A man complained to me that his claim for vandalism had not been accepted by I.C.B.C.

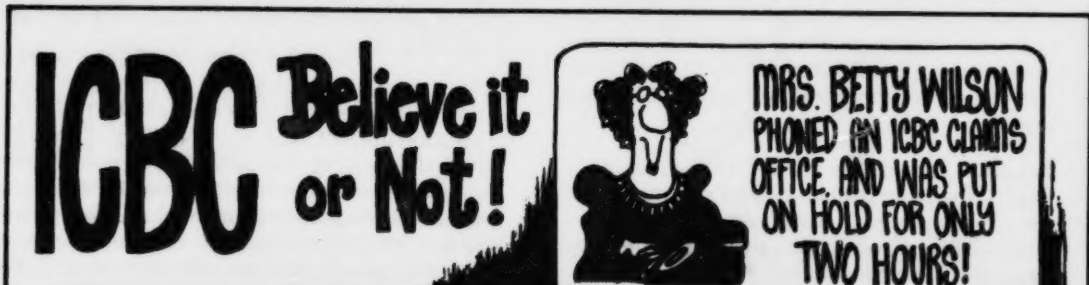
One night, in a poorly lit parking lot, a man was discovered letting the air out of the tires of a Corvette. Although the owner called the police to the scene, they did not notice any damage to the car until the following morning, when the owner discovered extensive scratches on his car. I.C.B.C. refused to honour the claim.

In my opinion, the owner had established a sufficiently strong case of vandalism. The act of vandalism had been observed and the scratches on his car were found soon after. In addition, an RCMP constable drove by the car on the night of the alleged vandalism and observed what he thought were scratches on the back of the vehicle. He could not confirm the damage because the light was so poor. I concluded that I.C.B.C.'s denial of the claim was unjust. Once the owner had established what appeared to be a case of vandalism, the onus of proof lay with I.C.B.C. to establish conclusively that the damage to the car was not caused by vandalism. I.C.B.C. failed to discharge this onus of proof.

The Corporation accepted my recommendation to honour the claim and referred it to the local claim office for a decision on an appropriate offer of settlement. (CS 82-196)

Impaired or injured

Last fall, a man drove home from a dinner given by a professional association when he was involved in a motor vehicle accident and knocked unconscious. A police officer discovered him,


ICBC Believe it or Not!
MRS. BETTY WILSON PHONED AN ICBC CLAIMS OFFICE, AND WAS PUT ON HOLD FOR ONLY TWO HOURS!
PROVINCIAL OMBUDSMAN, DR. KARL FRIEDMANN, HAD A PHONE CALL TO ICBC RETURNED TO HIM THE SAME MONTH!
MR. A.P. ZIFFEL ONLY GOT ULCERS, HIGH BLOOD PRESSURE AND A NERVOUS TWITCH WHILE TRYING TO GET ICBC TO SETTLE HIS CLAIM...
SAFE DRIVING DISCOUNT 3¢
RATE CLASS 16331
09
$906·68
PREMIUM 1,000,000
MR. MEL PFNOTZ'S YEARLY PREMIUM IS ONLY EQUAL TO HALF THE NATIONAL DEBT!
© RAESIDE

sitting in his car, with lacerations on his face, a broken nose, and some injuries to his shoulder and knee. The victim was treated in an ambulance, and the R.C.M.P. then took him to their station to administer a breathalyser test. The accident victim refused to take the test, saying that he had a broken nose and felt sick. He fell unconscious again. He was charged under the Criminal Code for driving while impaired and for refusing to take the breathalyser test. He was acquitted on both counts, and the trial judge commented on the lack of evidence of impairment. Nevertheless, I.C.B.C. denied his claim, citing a breach of policy by impairment as the reason.

I investigated whether I.C.B.C. had acted unjustly in denying the complainant's claim. Under the Regulation, an insured is in breach of his contract when his accident arises out of his operation of a motor vehicle, while under the influence of intoxicating liquor or drugs to such an extent that he is, for the time being, incapable of proper control of the vehicle. An insured is also in breach of his policy if his accident arises out of circumstances that result in his conviction for impaired driving or failing to give a breathalyser sample. Since there was no conviction, I.C.B.C. had the burden of establishing that the complainant had been, at the time of his accident, incapable of proper control of his vehicle due to his alcohol consumption. The only evidence that the insured had consumed alcohol prior to the accident was a police officer's statement that he had smelled liquor on the claimant's breath. The man also was said to have stumbled on rough ground when he got out of his car. In my opinion, the complainant's injuries, his pain and his recent unconsciousness sufficiently accounted for the stumbling. There remained the evidence of the odour of liquor on his breath. I was prepared to conclude that the Corporation was acting unjustly in denying the complainant's claim, since I seriously doubted that it would be able to fulfil the requirements for denying the claim under the Regulation.

The accident and its circumstances were sufficient to establish a prima facie entitlement to payment. Since the insured had fulfilled his onus, it was up to I.C.B.C. to establish on the balance of probabilities that he had been so intoxicated that he was incapable of properly controlling his vehicle. The Corporation had virtually no evidence of this and was acting oppressively towards the insured in forcing him to commence legal action in order to be indemnified for his loss. I was about to notify I.C.B.C. of my conclusions, when the Corporation informed me that it had changed its position and would pay the claim. (CS 82-197)

Missing diamond

In a third case, a person complained to my office about I.C.B.C.'s denial of her claim after she had experienced a loss in Asia. The complainant had travelled overland into Mainland China from Hong Kong, and took with her a diamond ring which she had owned for many years. Because the stones protruded from the setting, she habitually took the ring off in the evening and placed it in a box. When she became ill in China, she left her ring in the jewellery box, but continued touring the country. She rejoined her ship in Hong Kong and was indisposed for another couple of weeks. On her recovery, she discovered the loss of her ring and reported it to her purser. She made a claim with I.C.B.C., the carrier of her specified perils policy, on her return to Canada.

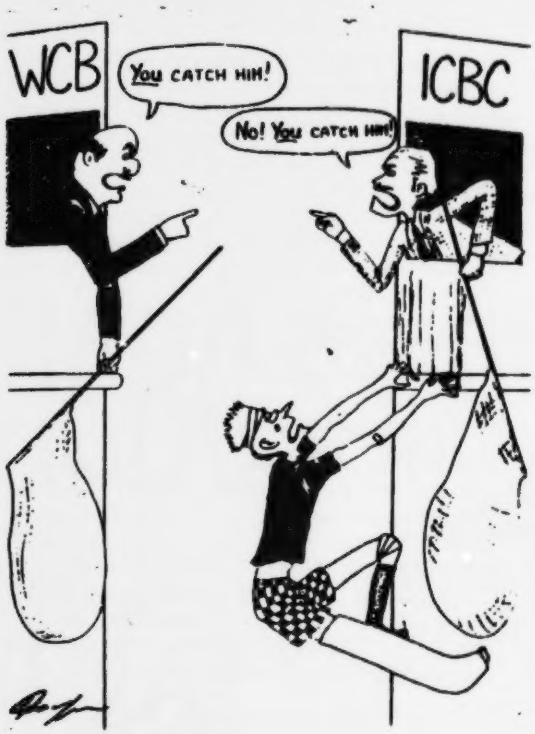
I.C.B.C. stated that the loss was a "mysterious disappearance", rather than a theft, and, therefore, not covered under the terms of her policy. The policy covered loss of personal property by theft and other specified perils. Theft is something which the claimant must establish before indemnity can be paid. A mysterious disappearance is considered to be the disappearance of property in unexplained circumstances, for example, a ring's disappearance after having been left on a dresser. Assuming that there is no real evidence of theft, the loss is classified as a mysterious disappearance, and falls outside the definition of theft. The peril causing the loss must be the peril described in the policy, and no other.

The onus of proving that the loss appears to have been caused by the specified peril is on the insured party. For example, if an insured claims under a burglary policy, the insured must show that burglary appears to be the cause of the loss. The insurer is entitled by law to require the insured to establish evidence, sufficient to indicate that the loss falls within the terms of the policy, at least on a preliminary view of the facts.

Unfortunately, this complainant was not able to indicate accurately when or where her loss occurred, since it could have happened at any time and in a number of places during her illness. There was no evidence pointing to theft, rather than to accidental loss. For these reasons, her insurer denied her claim. I found that I.C.B.C. had acted within its legal limits in denying this claim. (CS 82-198)

Nobody wants to pay

As a result of a complaint from a worker who was involved in a car accident while at work, and whose claim was denied both by the Workers' Compensation Board (on the basis that he was not at work when the accident happened), and by I.C.B.C. (on the basis that he was at work when the accident happened), I initiated an investigation into the relationship between these two agencies. On my recommendation, the Board and I.C.B.C. have met, and are in the process of working out procedures which should prevent the recurrence of such complaints. I hope that the lines of communication which have now been opened will be useful to both agencies. (CS 82-199)


WCB
You CATCH HIM!
ICBC
No! You CATCH HIM!

Woman gets benefits

Another investigation I conducted resulted in I.C.B.C. assisting a woman who had been denied benefits by the Workers' Compensation Board for the death of her husband. In this case, the widow had initially contacted I.C.B.C. about death benefits, but was told that as her husband was a worker at the time of the accident, she should apply to the Workers' Compensation Board. Unfortunately, the Board concluded that the man's accident did not occur in the course of his employment, and this decision was upheld on appeal to the Board of Review. By the time the widow reapplied to I.C.B.C. for benefits, her one-year time limit for applying for benefits had expired and her claim was denied. I convinced the Corporation that, under the circumstances, the woman was entitled to I.C.B.C. benefits. (CS 82-200)

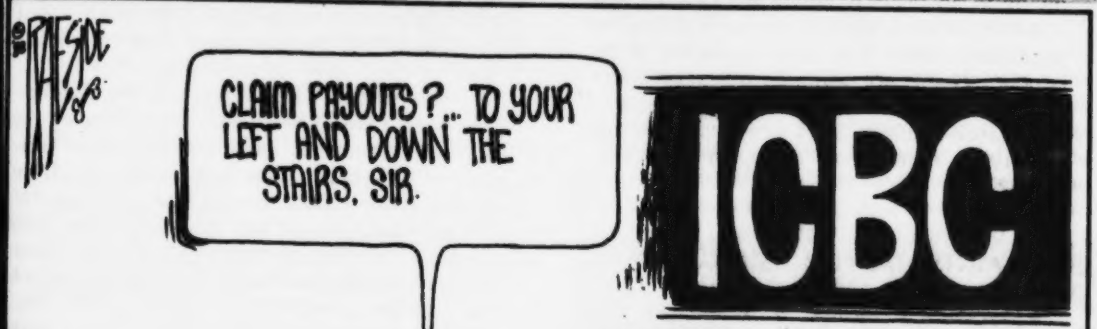
Law Society co-operates

In another situation, I was able to establish contact between I.C.B.C. and the Law Society. In response to a recommendation I made concerning information which I.C.B.C. should give to claimants regarding accident benefits, the Corporation stated that whenever claimants are represented by lawyers, it would be inappropriate for adjusters to deal directly with the claimants. Although I did not feel that sending a form letter to a claimant would constitute a breach of ethics, I arranged for a meeting between the Law Society and I.C.B.C. to resolve this problem. It is important that all B.C. residents are advised of their right to receive no-fault benefits after an accident, whether they are represented by lawyers or not, especially since I have had complaints that lawyers did not inform clients about no-fault benefits. As a result of the meeting, the Law Society agreed to publish a copy of the form letter in its newsletter, explaining to its member that this particular "contact" had been approved by it. I am still monitoring the implementation of this proposal. (CS 82-201)

[illegible]

[redacted]

[redacted]


RAESIDE
CLAIM PAYOUTS ?... TO YOUR LEFT AND DOWN THE STAIRS, SIR.
ICBC
RECEPTION

[illegible]

Holding back money

A man who owned two cars complained to me that I.C.B.C. had delayed payment of a refund after he cancelled his insurance on one car. The reason given by the Corporation was that the man had financed the car insurance on his second vehicle, but his refund from the cancelled policy would not be issued until the final payment on his second policy had cleared the bank.

I.C.B.C. told my investigator that Item 6 of the Finance Note, which constitutes a contract between an insured and I.C.B.C., allows the Corporation to withhold payment of any money owing to an insured, while the finance note is still in effect. In view of the fact that the Corporation's action was taken pursuant to the contract, I could not substantiate this complaint. However, I am concerned about this clause in the finance contract, and I intend to investigate this issue further on my own initiative. (CS 82-202)

COMPLAINTS I DO NOT USUALLY [illegible]

Partly because of the volume of complaints received at my office, I have generally exercised [illegible]

Suspicious liquid

A man's vandalism claim was not accepted by I.C.B.C. As the insured's time period for suing had passed, I investigated the complaint. The man had stored his Volkswagen for almost two years, took it out of storage and drove without any problems for four months. Then one day, the car would not start, and the complainant took it to a repair shop which found that the car's fuel injectors had rusted. At this time, I.C.B.C. was on strike. The repair shop cleaned the injectors, dumped the contents of the tank, and found a yellowish substance suspended in the gasoline. The owner of the shop said that he suspected vandalism and that the liquid suspended in the gasoline was probably urine. The complainant took the car back, but continued to experience problems. He took it to another repair shop which did some work on the electrical system. This shop, however, doubted that the electrical system was the source of his problem. The complainant continued to have trouble with the car.

Several months later, the engine seized up and he took it to a third repair shop, where his engine was dismantled. A gasoline sample was sent out for analysis. The analysis indicated that urine could be present, but because of the small size of the sample and the passage of time, the result was not conclusive. In the meantime, I.C.B.C. had denied the claim, stating that the damage had been caused by condensation occurring during the storage period. The complainant's appeal to the Material Damage Supervisor of his Claim Centre was not successful. By the time the complainant came to me, his relationship with I.C.B.C. had deteriorated to such an extent that he had not submitted the result of the analysis of the gasoline sample to the Claim Centre. My assistant requested that he do so. I.C.B.C. was receptive to our inquiries and hired two more mechanics to give their opinions. While one mechanic concluded that there could have been urine damage, the second one dismissed the possibility. I.C.B.C. gave a copy of both reports to my office. I was critical of the content of the second report and was prepared to delve into the problem even further, but at this point, I.C.B.C. extended the complainant's limitation period for several more months. Since the complainant now had a right of legal action and had hired a lawyer, I discontinued the investigation. (CS 82-203)

[illegible]

Premature terminations

An I.C.B.C. claimant complained to me that her accident benefits were terminated without notice or reasons.

The Insurance (Motor Vehicle) Act Regulation prevents I.C.B.C. from terminating a claimant's rehabilitation benefits (because of non-compliance on the part of the claimant with I.C.B.C.'s requirements), unless it has given the claimant at least 120 days notice in writing. I.C.B.C. had not followed that rule. I recommended that the Corporation reinstate the claimant's benefits and pay all the benefits to which she was entitled, retroactive to the date of the last payment. The Corporation accepted my proposal and paid the claimant $2,400. (CS 82-204)

Wrong interpretation

A woman complained to me that I.C.B.C. had terminated her benefits, while she was still totally disabled.

I.C.B.C. had terminated the claimant's benefits on the basis of a doctor's report, which the Corporation interpreted to mean that she was capable of returning to work. I reviewed the medical report which stated that there had been little improvement in the woman's condition. The doctor felt that she might be able to return to work, once her claim had been settled because her anxiety might be reduced at that time.

It appeared to me that the Corporation had misinterpreted the doctor's report. When I advised I.C.B.C. that I was considering a recommendation that the woman's benefits be reinstated, I.C.B.C. agreed to do so. (CS 82-205)

A case of autophobia

A claimant complained to me about I.C.B.C.'s refusal to pay for her transportation costs to Vancouver.

The claimant was involved in a car accident, while she was in the process of moving to Vancouver. After her release from hospital, she travelled to Vancouver by plane. I.C.B.C. refused to pay for her flight because she had planned to move to Vancouver before her accident.

The Insurance (Motor Vehicle) Act Regulation requires the Corporation to pay for all services essential for physical or psychological treatment or rehabilitation. The claimant's doctor had reported to I.C.B.C. that the woman had developed a phobia about automobiles after her accident, and that riding in a car made her anxious and upset to the point where she required sedation. I pointed out to I.C.B.C. that it may have been essential, as a form of preventive treatment, for the claimant to complete her move to Vancouver by air, rather than by car. The Corporation agreed to pay for the claimant's plane fare. (CS 82-206)

It's a long road to compensation

A man was severely injured in an automobile accident. He had been employed as a manual labourer but was unable to return to his job. His company agreed to train him in a managerial position and he succeeded in this endeavor for several months. Unfortunately, the company then reorganized existing positions, and the complainant was laid off. He had informed I.C.B.C. that he would be forced into another period of total disability, but the Corporation took no action. The complainant also informed the Corporation that its records seemed to be out of date because he had had four more operations than I.C.B.C.'s records showed and was scheduled for a fifth. The complainant was extremely distraught when he came to me. He had no money, and despite his best efforts, I.C.B.C. had little on file about the extent of his injuries or his need for further benefits.

My assistant contacted the Corporation, which was initially unable to provide assistance because the file was lost. My complainant grew increasingly upset. The file was located a week later, and I.C.B.C. immediately added the missing medical information, recognized that the man was entitled to Total Disability Benefits, and issued him an advance on his wage loss claim. Although I was encouraged by the end result, I was disturbed by the lack of information on I.C.B.C.'s files, and what this man had to go through before he received the monies to which he was entitled. (CS 82-207)

Oops, only off by 80 percent

An innocent car accident victim complained that I.C.B.C. had offered to settle his claim for pain and suffering and wage loss for an amount substantially below his wage loss alone. He had attempted to explain this to I.C.B.C., but had met with no success. His loss of earnings was well documented in a letter to the Corporation from his union's president.I brought this matter to the attention of the Corporation, and after receiving the material, I.C.B.C. agreed to raise its settlement offer by some 80 percent. This was acceptable to the complainant, and his claim was settled. (CS 82-208)

Everyone sees red

A woman was involved in a car accident. She stated that the other driver had gone through a red light. The other driver said that the complainant was the one who had gone through the red light. There were no witnesses; thus I.C.B.C. was asked to make a liability decision in a situation in which one of the drivers must have been lying.

The Corporation's position in such situations has been to split liability, but allow each person to retain his or her Safe Driving Discount. This had been done in the other driver's case, but the woman who complained to me had lost her discount. When we pointed this out to the Corporation, it refunded the money she had lost. (CS 82-209)

Information first; decisions second

An elderly man was involved in a minor car accident in 1979. He reported this to I.C.B.C. as a precautionary measure but took no further action on his claim because the damage was so slight. In 1982, the complainant was very upset to learn that he had lost his Safe Driving Discount as a result of the payment of a claim by the other driver. When he complained about this, he was told that liability had been divided between himself and the other driver. He refused to accept this because he had never made a formal statement about the circumstances of the accident. The Corporation tried to get a statement from him after our initial inquiry, but so much time had passed since the accident that the complainant was unable to remember the exact circumstances.

In light of the paucity of information on file, and the claimant's inability to reconstruct the accident, the Corporation decided to reinstate his Safe Driving Discount. (CS 82-210)

Insuring your premium

A woman had to rent a car after her own vehicle was damaged in an accident. She was not responsible for the accident, and I.C.B.C. agreed to pay for the rental costs but refused to pay for collision insurance for the rental vehicle, because she did not have collision insurance on her own car. The woman felt that this was unfair, because she was not at fault in the accident. She had elected not to insure her own car for collision, because of its age, but felt that she would want a brand new rental vehicle covered for collision. So she paid for collision coverage herself. The Corporation reviewed the case at my request, and reimbursed the complainant $136 for collision insurance. (CS 82-211)

THE CORPORATION WAS RIGHT

I.C.B.C. deserves to be complimented for responding to complaints directed to it, and effecting changes without formal recommendations from me. During the past three years, I have received several complaints regarding Loss of Use coverage, and Special Equipment Endorsements. Neither is part of the basic insurance package, but nowhere on the policy form does it mention that they are optional extras which must be applied for in order to ensure coverage. When my staff discussed this problem with I.C.B.C., they discovered that the Corporation had itself received many complaints about this, and was going to amend its forms.

I also wish to commend I.C.B.C. for its introduction of "Underinsured Motorists Protection". Under this plan, an insured can receive full benefit of the maximum amount of his or her own third-party liability to cover injuries caused by a driver with insufficient coverage.

In the following cases, I found that I.C.B.C. had acted correctly in reaching its decisions.

Animal impact

One complainant reported that his vehicle had collided with an elk. The incident was unfortunate for both parties, because the elk died and the motorist's claim for repairs to his vehicle was rejected by I.C.B.C.

I found that the Corporation's denial of the claim was proper, because although the complainant had purchased insurance for "specified perils", he did not have "comprehensive" coverage which is required for damages incurred through impact with an animal. (CS 82-212)

Out-of-province insurers

An I.C.B.C. claimant was involved in a collision with a vehicle bearing Alberta licence plates. After the accident, he made a claim through his I.C.B.C. collision coverage, although he also had the right to claim directly against the private insurer of the other driver. Making a collision claim to I.C.B.C. involved the loss of his deductible and Safe Driving Discount. I.C.B.C. decided to pursue its subrogated interests against the private insurer, but had not concluded negotiations before the claimant's insurance expired. Therefore, upon renewal, he had to forfeit his Safe Driving Discount. The claimant wanted I.C.B.C. to commit itself to a liability decision and to pursue his rights against the private insurer.

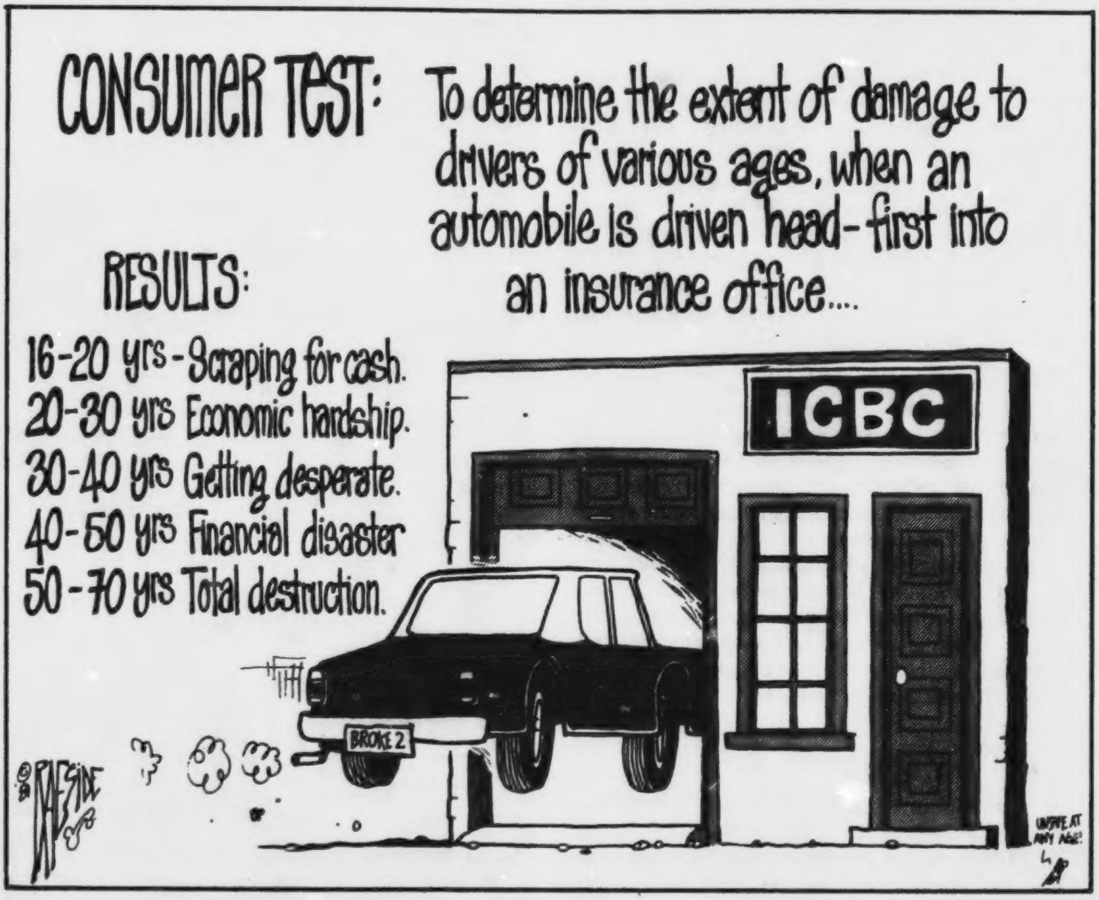
I.C.B.C. informed me that the Claims Centre had been trying to settle its claim with the private insurer. There was, however, a liability dispute and this was impeding negotiations. Because many people operate under a misconception about the nature of their insurance with I.C.B.C., an explanation of the Corporation's responsibilities and rights was in order. "Autoplan" is a program of compulsory third-party liability insurance. This means that every person insured by I.C.B.C. is protected against claims made by individuals who may be injured or have property damage because of the insured person's negligent driving. If anyone makes a successful claim against the insured person's coverage, I.C.B.C. pays the claim and the insured party loses only his or her Safe Driving Discount. If the Corporation challenges the claim of a third party against its policy holder's coverage, then it must defend the insured in any court action which follows.

I.C.B.C. also offers optional collision coverage. This means that an insured can make a claim to the Corporation for any damage to his or her own vehicle, regardless of fault. An insured, who is involved in an accident with a person from outside British Columbia, has the choice of pursuing the out-of-province driver directly by making a claim against the driver's insurer, or of making a collision claim to I.C.B.C. If the insured elects to do the latter, even if he or she is not responsible for the accident, the Safe Driving Discount will be lost. When an insured makes a collision claim, liability is not in question and I.C.B.C. is not responsible for providing legal counsel. Once I.C.B.C. honours a claim through an insured's collision coverage, it acquires a subrogated right, i.e. a right to recover money paid to its insured from the responsible party. When it does this, it also has a practice of asking the responsible party to reimburse its insured for his or her deductible. If the private insurer accepts that its own insured party is 100 percent liable for the accident and indemnifies I.C.B.C., then the Corporation is able to reinstate its claimant's Safe Driving Discount. It is important to note, however, that I.C.B.C. has no obligation to the insured in this respect, and the insured retains the right to pursue the responsible party for any losses incurred. The Corporation is not the advocate of its policy holders, and coverage cannot be purchased to compel it to act in this capacity. (CS 82-213)

Automatic breach

A man was involved in a single-vehicle accident and was subsequently charged with impaired driving and failure to provide a breath sample.

He was acquitted of the impaired driving charge, but convicted of failing to take a breathalyzer


CONSUMER TEST: To determine the extent of damage to drivers of various ages, when an automobile is driven head-first into an insurance office....
RESULTS:
16-20 yrs - Scraping for cash.
20-30 yrs Economic hardship.
30-40 yrs Getting desperate.
40-50 yrs Financial disaster
50-70 yrs Total destruction.
ICBC
BROKE 2
RAFSIDE
UNSAFE AT ANY AGE!

test. I.C.B.C. denied his claim on the basis of this conviction. The complainant felt that as an insurance company, I.C.B.C. should be concerned only about whether or not he was actually impaired at the time of the accident, and not about his degree of co-operation with the police in refusing the test.

I was unable to substantiate this man's complaint. I.C.B.C.'s Regulation (passed pursuant to the *Insurance (Motor Vehicle) Act)* states that a conviction for refusing to supply a breath sample constitutes a breach of the insurance policy. In view of this provision, I concluded that I.C.B.C. was acting properly in denying the claim. (CS 82-214)

I.C.B.C. does no wrong

A woman's car was damaged in a minor accident just before the 1981 I.C.B.C. strike. She complained that although she was clearly not at fault for the accident, I.C.B.C. delayed processing her claim for more than a year. When an offer was made, she complained that it was insufficient to the point of being laughable. Although these were the two principal issues, the woman registered a total of twenty-three individual complaints against the Corporation.

I determined that although the complainant had some right to be upset about the delay involved, I.C.B.C. had handled her claim in an exemplary fashion in every other way . The Corporation had provided her with the names of two body shops that had replacement parts in stock. It had offered to contribute towards the cost of repairs, if she chose not to use those particular shops, and it had offered to write off her car as a total loss and pay her accordingly if she did not accept either of these alternatives.

When she complained that I.C.B.C.'s appraisal of her car's worth was biased, the Corporation agreed to have another appraiser come to her house to assess the value of the vehicle. Although the second appraisal was forty percent less than the first appraisal, the Corporation still agreed to honour its original offer. Even her complaint of delay was mitigated by the fact that I.C.B.C. contacted her as soon as the strike was over and took immediate steps to settle her claim. Further, the woman could not show that she had been inconvenienced in any way because of the delay. (CS 82-215)

A fowl story

A complainant said I.C.B.C. had denied his claim for theft of his vehicle after hearing his account of the circumstances leading to his vehicle's disappearance. The complainant's version was that his car was stolen by a stranger who appeared at the complainant's door one day, asking whether he had any chickens for sale. Although the complainant was not and never had been in the business of selling chickens, he invited the stranger in for a drink. Later in the afternoon, the complainant told the stranger that he was going to take a nap. When he awoke in the evening, his new companion and the car were gone. The complainant took a taxi to a restaurant, where he received a phone call advising him that his car was somewhere in a ditch. Early next morning, the complainant informed the R.C.M.P. of the location of his car. The constable found the car buried deep in the bush at the specified intersection. The constable questioned the complainant and the two returned to the complainant's home together, where they found the keys to the vehicle hanging on the living room wall. I.C.B.C.'s Special Investigations Unit investigated the circumstances of the theft and recommended that the claim be denied. I decided that the Corporation had ample reasons to deny the claim. (CS 82-216)

COMPLAINTS FROM THE BUSINESS COMMUNITY

I have investigated three complaints by insurance agents who had their applications for an Autoplan agency licence rejected. The first of these was from the Nanaimo area and resulted in a complete review of I.C.B.C.'s agency appointment procedure. I criticized the procedure on a number of grounds: I.C.B.C.'s failure to disclose the substance of adverse information to the applicant, so that he could have an opportunity to answer it; failure to notify other agencies which may be affected if the application were granted; insufficient notice of the advisory panel's [illegible] in this case; failure to [illegible] the [illegible] submissions of the applicant, and failure to provide [illegible]. I.C.B.C. agreed to reconsider the application and accepted all of my criticisms, except one. It declined to notify [illegible] on the basis that they would likely provide biased viewpoints. I did not press this [illegible] if I receive further complaints.

On the [illegible]

[illegible]

LEGISLATIVE REFORM

Throughout 1983, I became aware of a number of provisions in the Insurance (Motor Vehicle) Act Regulation which, in my view, are in need of reform.

[illegible]

According to the Insurance (Motor Vehicle) Act Regulation, individuals who were injured in car accidents prior to March 1977, and who are still receiving accident benefits from I.C.B.C., are entitled to $50 a week. Individuals whose accidents occurred between March, 1977, and January, 1980, are entitled to $75 a week, and those who were injured after January, 1980, are entitled to $100 a week. In my view, it is improperly discriminatory to differentiate between the accident benefits paid to injured persons on the basis of the dates of their accidents. Clearly, the date on which a person becomes totally disabled has no relevance to the amount of money required to support that person. In 1983, I made a preliminary recommendation to I.C.B.C. that the Regulation be amended so that accident benefits of at least $100 per week be paid to all individuals currently receiving these payments. I.C.B.C. has agreed to research the effect of this amendment on the Corporation, but [illegible], it does not agree with my proposal. [illegible]

[illegible]

Since my office opened, I have received a number of complaints [illegible] which may be imposed as a [illegible] as a result of an offence under the Motor Vehicle Act.

In 1981 [illegible]

[illegible] I.C.B.C. [illegible]

I concluded in 1981 that the provisions [illegible] two separate fines for the same offence were unfair and oppressive, and I [illegible] the Ministry of my conclusion. Subsequently, the Motor Vehicle Amendment Act of 1982 was passed. It contains a provision for the repeal of section 29, but this provision has not yet been proclaimed. As a result, the public is subject to multiple penalties for breaches of the Motor Vehicle Act. I still believe that the situation is unfair, and I continue to receive complaints from individuals who feel that they are being subjected to double jeopardy. Because I believed that the recommendations in the Motor Vehicle Task Force Report for the repeal of section 29 would be implemented, I did not see the necessity in 1981 of pursuing my recommendation. It now appears that some encouragement is required. Therefore, I am recommending that the Minister take the necessary steps to ensure that section 9 of the Motor Vehicle Amendment Act (1982) is proclaimed.

SHORT-RATE TABLE

Since my office opened, I have received several complaints concerning I.C.B.C.'s use of its short-rate table in calculating insurance refunds for early cancellations. Some complainants took issue with the levy of a percentage of the premium to cover administrative costs, saying that a fixed minimum retained premium for such costs would be preferable. Others objected to the 15-day spread in the short-rate table, and expressed doubts that such a large spread was fair, in light of increasing rates. Persons who stored their vehicles for part of the year, found that they were particularly vulnerable to any inequities in the Corporation's cancellation policies, since each year they cancelled their coverage while storing their cars [illegible].

I found that the Corporation's retention of a percentage of the premium to cover administrative costs was fair. I.C.B.C. justifies the practice by indicating that costs, such as agent's commissions and document recording are distributed to all cancelling policy holders by charging a percentage rather than a fixed amount. In this way, higher costs are borne by those paying higher rates, while owners at the lower end of the scale are not unduly penalized when they cancel their coverage. What concerned me was that in addition to the 10 per cent fixed retention for administrative costs, the Corporation also retains 4 per cent for each 15-day period or less that the coverage is in effect. The Corporation terms the retention of the 4 per cent as "earned premium". A policy holder cancelling, for example, 345 days before expiry, forfeits the same amount as someone [illegible]

[illegible]

[illegible]

LABOUR RELATIONS BOARD

[illegible]

Ignorance of the law is no excuse

A Branch of the Canadian Legion in an Interior B.C. town ran afoul of the B.C. Labour Code when it tried to save money by laying off recently unionized staff. An application to the Labour Relations Board resulted in a decision, the implementation of which the Legion claimed would leave it in a shaky financial position and possibly unable to continue its charitable work, such as sponsoring youth groups, assisting the needy, providing transportation for senior citizens, and caring for veterans, their widows and families.

The Vice-Chairman of the Board, who issued the decision, found the facts of this case to be "most unfortunate". It was recognized that the Legion negotiators had not understood the ramifications of certain clauses when they concluded a contract with the union. Nevertheless, despite the sincerity of those who represented the Legion's cause, the Board had no choice but to rule against the Legion.

When the Legion complained to me about the Board's decision, I had my Administrative Law Specialist consider the decision and it was found to be legally sound. The financial consequences of the decision are, however, not relevant to the correctness of the decision. (CS 82-217)

Labour pains

A manufacturer involved in the construction industry complained to me that the Labour Relations Board had yielded to the demands of a trade union with which his company was in conflict, resulting in serious economic repercussions for his company. At issue was the extent to which the company was able to subcontract the hauling of its products to non-union truckers.

Eight months before his complaint to me, the manufacturer and the trade union had approached the Labour Relations Board to resolve their dispute. At that time they had agreed to a consent order which, among other things, stipulated that the central issue should be decided by an arbitration board. They hoped that a speedy arbitration would produce an answer to end the conflict. Unfortunately, because of unforeseen circumstances, the arbitration report was some nine months in the making.

In the meantime, a frustrated employer and union continued to square off at each new eruption of their continuing battle. It was this frustration which finally brought the employer to my office.

I found that the Labour Relations Board had done its utmost to be of assistance to the parties. It had been twice necessary to amend the original consent order, and both times this was done with the involvement of both employer and union. The Labour Relations Board Vice-Chairman took great pains to keep his door open to both parties. In my opinion, the Board had performed its function appropriately and the complaint was not substantiated. (CS 82-218)

[illegible]

No discrimination here

The owner of a small courier service accused the Motor Carrier Commission of discriminating against his company. The complainant wanted to expand the operating authority of his company across a municipal boundary. He believed, however, that his chances for obtaining this authority were slim because the area was already well served by existing carriers. He blamed the Motor Carrier Commission for this situation and complained that the Commission favoured existing carriers by making it easy for them to obtain licences for additional vehicles.

The Motor Carrier Commission requires each vehicle operated by a carrier to be separately licensed. Holders of existing licences are, therefore, required to apply for permission to operate any additional vehicles within the terms of the existing operating authority. If such applications draw no outside objectors, the Commission has delegated its authority to the Motor Carrier Branch of the Ministry of Transportation and Highways to grant the application. Otherwise, all applications, including those for additional operating authority, must be approved by the Commission itself. Since the complainant's company was applying for additional operating authority and not just an additional vehicle, it had to go through the regular procedure. This required more time than if he were simply applying for permission to operate an additional vehicle. The complainant would also have to present a case to justify the expansion of his operating authority.

I found this to be a reasonable procedure on the part of the Commission. Existing licence holders will usually have demonstrated their fitness and capacity to carry on the business to which the new vehicle will be devoted. The need for the service will also have been previously demonstrated. Abuses of the system are prevented by the fact that the delegated authority does not apply to applications for a large number of vehicles or where the new vehicle represents new competition for existing licence holders. Normally, however, no useful purpose would be served by requiring the regular application process for additional vehicles to which no objection had been taken.

Although this policy "discriminates" between new and existing carriers in the sense that they are treated differently, the procedure is justifiable, and I could not substantiate the complaint. (CS 82-219)

[illegible]

Tough but fair

A small dairy farmer complained that the Motor Carrier Commission had permitted a 700 percent increase in carriage rates for shipping his milk to the dairy. As a result, his dairy business was threatened. The dairy to which he supplied milk had engaged a carrier to pick up the farmer's milk and passed the charges on to the farmer. The sudden rate increase was due to a switch from a charge based on volume to a minimum rate of $15 per pickup. The complainant's low volume had kept his shipping charges low.

A minimum rate of $15 per pickup had been a term of the contract between the dairy and the carrier for many years, but it had never been applied to the complainant by the carrier. The carrier was an older man; when he died, his son applied to the Commission to have the licence transferred to him. The Commission insisted on compliance with the terms of the shipping contract between the dairy and the carrier, including the minimum charge.

The Commission approves rates for contract carriers if the charges meet actual costs plus a reasonable return. This was the original basis of the $15 minimum charge. Today the actual costs are much higher. It appeared that for a number of years, the complainant had benefitted from undercharging. Although I sympathized with the complainant's economic plight, I could not hold the Motor Carrier Commission responsible for it. (CS 82-220)

DELAY

I am very concerned about the lengthy delays involved in processing applications by the Motor Carrier Commission. A delay of six months is apparently normal. My impression is that the Commission's resources may not be adequate.

Many of the complaints I receive against the Motor Carrier Commission indicate a deep feeling of frustration on the part of licence applicants; they feel abused by the licensing restrictions and the delays involved in awaiting decisions on applications. Ultimately, the only recourse an applicant might have is to appeal an unfavourable decision of the Commission to the Lieutenant Governor in Council. While waiting for the outcome of the licence application process, some applicants are driven to public displays of frustration and anger.

Have truck, will haul

The complainant was licensed by the Motor Carrier Commission to haul logs and gravel in Licence District No. 21 in northeastern B.C. He wished to expand his business to hauling heavy equipment for mining, construction and oil field operations. The complainant purchased tractor and trailer equipment with special loading devices valued at $160,000 to suit this purpose and applied to the Motor Carrier Commission in May 1979 for expanded licence authority.

The Motor Carrier Commission rejected the complainant's application in October 1979, citing the lack of public support for the application. The complainant demonstrated his frustration with the Commission's decision by continuing to operate without proper licence authority and on one occasion by blockading the Motor Carrier Branch weigh scales with his equipment. The Commission still refused to issue the requested licence.

The complainant came to me for help in November 1980. My investigator discovered that the complainant's application to haul heavy equipment had elicited considerable public support from shippers requiring his services. I recommended to the Motor Carrier Commission that it reconsider its decision. The Commission agreed and held a public hearing in Fort St. John in June 1981.

The Motor Carrier Commission again rejected the complainant's application, this time because of the downturn in the economy of the region which resulted in reduced demand by shippers and a surplus of licensed haulers. The complainant appealed the Motor Carrier Commission's decision to the Lieutenant Governor in Council. His appeal was heard in June 1982. The complainant's application was accepted on appeal and he was granted the licence authority to haul construction, mining and oil field equipment. (CS 82-221)

PUBLIC SERVICE COMMISSION

[illegible]	
Declined, withdrawn, discontinued	19
Resolved: corrected during investigation	8
Substantiated: corrected after recommendation	3
Substantiated but not rectified	0
Not substantiated	6
Total [illegible]	36
Number of cases open on December 31, 1982	6

[illegible]

What a difference a day makes

A public servant complained to me that he had applied for a job with another Ministry but was excluded from the competition because the Public Service Commission claimed that the application had been received a day after the deadline. Since he had been waiting to apply for this fairly senior position for a considerable period of time and had submitted his application three days before the deadline, he was very distressed.

The background to the complaint was that the Public Service Commission had experienced difficulty in getting applications from its various offices to the central office without delays of 10 days or more. To solve this problem, a new policy went into effect April 1, 1982. It stipulated that all job applications be at a specific designated Public Service Commission office by the deadline. The designated office would differ from competition to competition.

The man who complained to me had been unaware of this recent change in policy. When he came to the Public Service Commission office in Burnaby three days before the competition was scheduled to close, the counter clerk took his application and said it would be forwarded to the Vancouver office of the Commission. He was not advised of the new policy, nor was he warned that it might not get there in time. In fact, it did not get there in time. It arrived one day late. My complainant subsequently received a letter advising him that he was not eligible for the competition. I investigated the complaint and found it was substantiated. The Commission ignored its own policy, accepting an application at the wrong office. It was negligent in failing to deliver it on time after undertaking to forward it. Although the Public Service Commission alleged that it was accepting the applications at the wrong office "as a public service", I draw the analogy of the good samaritan who is negligent in the performance even of an act of kindness and is historically, in our society, found to be liable for his negligent actions.

The complaint was resolved when the Ministry to whom the public servant had applied decided to repost the competition rather than wait until my office and the Public Service Commission had resolved it. (CS 82-222)

Commission to obey the law

Over time, I received complaints from individuals who had applied for employment with the public service and had been told that their applications would not be accepted, because they did not meet the residency requirements. Some of the complainants were born and raised in the province and had been absent from British Columbia for only a few months. When they returned, they found themselves ineligible for employment as public servants.

I investigated the matter and found that many ministries and, indeed, some staff at the Public Service Commission pursued a practice of not accepting applications from individuals who had not resided in British Columbia for the past twelve months. I researched existing legislation and found that this policy was contrary to the provisions of the *Public Service Act*. I did not address myself to the question of what might be a desirable policy—this is a matter for the Legislature to decide. If the Legislature wishes to do so, I am sure it will deal with the matter and restrict employment possibilities for non-residents.

I merely reminded the Chairman of the Public Service Commission of the law as it exists and recommended that he change the practices of the Commission to coincide with the provisions of the law. The Public Service Commission has, in the meantime, issued a circular reminding ministry personnel departments that residency is not a basic requirement for employment and that applications are not to be rejected based solely or particularly on an applicant's residency status. (CS 82-223)

A simple solution

A physically-handicapped federal public servant, who lives in a small British Columbia community, would like to find a job with the Provincial Government. Provincial public service jobs are advertised in a publication called Postings. That publication, until recently, was mailed weekly to the homes of public servants and was also available in Canada Manpower centres, public libraries, Government Agent's offices and some other locations. Because of his handicap, the complainant found it difficult to get access to the publication and asked the Public Service Commission to send him a copy in the mail every week. He was willing to pay for this service.

The Public Service Commission told him that this was not possible. He wrote to the Premier and was, once more, informed that exceptions to the distribution system are impossible. I got in touch with the Public Service Commission and received the same information.

Instead of spending much time and money, dealing with the Public Service Commission on this matter, I decided to resolve it in a way that takes up little time and effort: I instructed my office to mail a copy of Postings to the complainant every week. (CS 82-224)

SUPERANNUATION COMMISSION

Hanging in there

Early in 1969, the complainant terminated his employment with the public service. According to information on file, he informed the public service that he was taking up employment with the Federal Government.

Since November, 1972, he received a pension from the provincial public service. It appears that he was not informed at the time that as a federal public servant he was not entitled to his full pension. Not until 1976 did the Superannuation Commissioner get in touch with him, asking him whether he was employed. The complainant responded that he was, indeed, employed. After considerable correspondence and some years later, he was informed that the Superannuation Branch had overpaid him an amount of more than $6,000. He sought my help because he did not think he should have to repay this amount.

The complainant did not have the option of simply not paying. He was entitled to a small pension, and the Superannuation Branch attempted to recover the overpayment by withholding a portion of his monthly pension.

I found that the Superannuation Commissioner had been negligent in granting a pension to a person who was not entitled to it, and in not inquiring earlier whether the complainant was employed. I also found that unreasonable delays had occurred in informing the complainant that he was expected to repay an overpayment. I found it unjust that the Commissioner was withholding a portion of the complainant's already very small pension to recover the overpayments. I further found that the overpayment had been caused by a mistake of fact committed by the Commissioner due to his negligence. I examined certain provisions of the *Pension (Public Service) Act* and found them to be improperly discriminatory. I discovered that if a public servant who qualifies for an early retirement pension leaves the public service and commences employment with a private employer, he is entitled to receive his full pension. If he takes up employment with certain public employers, he is entitled only to a reduced pension.

Because of these findings, I made three recommendations to the Commissioner:

I recommended that the Commissioner ask pensioners annually to provide a statement indicating whether or not they are employed. The Commissioner informed me that such a procedure had now been introduced.

I also recommended that the Superannuation Commissioner initiate reconsideration of the relevant provisions contained in the *Pension (Public Service) Act* and that he draw my concerns to the attention of the Provincial Secretary. The Commissioner responded that he had informed the Provincial Secretary.

Most importantly, I recommended that the Superannuation Commissioner reverse his decision, requiring the complainant to repay the overpayment. The Commissioner informed me of his intention to proceed with the recovery of the overpayment because, based on legal advice, he considered it his obligation and duty to do so.

Subsequently, the Provincial Government introduced its new *Financial Administration Act* which, under certain circumstances, makes it possible for individuals to commence court action against the Government when it asserts a right to recover monies paid without authority.

A certain section of the *Crown Proceeding Act* provides the Government with an opportunity to make payments to an individual, or in this case, to discontinue collecting an overpayment, if there is a likelihood that the individual might win the case in a court of law. Since the complainant could now have gone to court on the matter, I raised the case with the Ministry of Attorney General.

While discussions continued over many months, the complainant, now retired from his job with the federal public service, was entitled to a full pension from the Provincial Government. The Superannuation Commissioner now tried to accelerate recovery of the overpayment by withholding a larger sum of money from the complainant's pension cheque. After my investigator discussed the matter with the Superannuation Branch, the larger deductions were discontinued.

Finally, three years after I had received the complaint, good news came from the Ministry of Attorney General: the Ministry had concluded that the Crown did have the right to make recoveries of the overpayment until the *Financial Administration Act* came into force, although the overpayment had been made because of a mistake of fact. After the advent of the new *Financial Administration Act*, deductions should no longer have been made. As a result, my complainant received a refund cheque of $488.51 for deductions that had been made in the interim. No further deductions will be made.

All in all, the complainant saved $4,991.77. Unfortunately, he was not overly happy. He felt that he should have received a refund of the full amount that had been deducted from him. I had to tell him that the Ministry of Attorney General, with whose involvement the settlement was arrived at, had done everything it could do within the framework of the existing law.

For me, this case was a very simple one—the Government had made a mistake, and I did not see why an individual should pay for this mistake. The complainant, a physically-handicapped person, had made decisions regarding his career and regarding his old age, based on information given to him by the Government. He had a right to rely on that information.

This case is noteworthy for two reasons: it ended happily even though it took three years after the complainant first came to me and it established the principle that the Government must assume the financial consequences of its mistakes. It also convinced me of something I had learned much earlier: as long as I believe that I'm right and as long as there is still a chance to make my point, it pays to hang in there and keep on trying. (CS 82-225)

Let the Cabinet decide

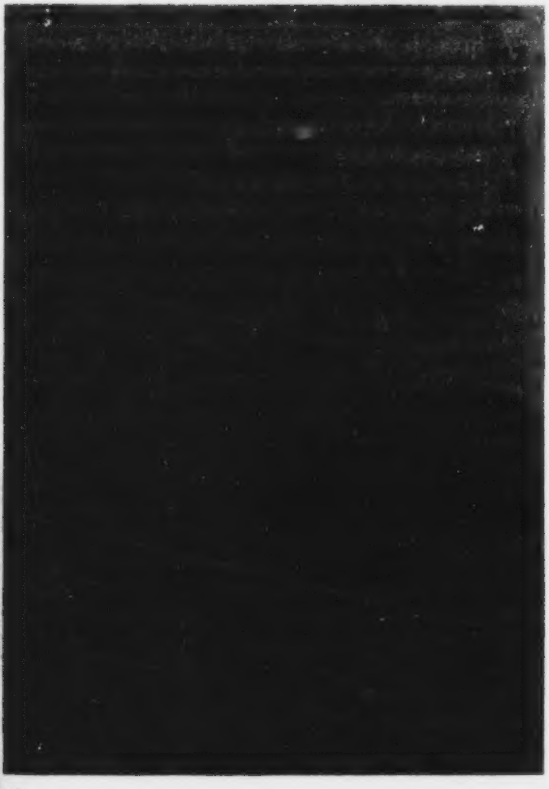
A public servant came to me with a complaint against the Superannuation Branch. He had been a public servant from 1962 to 1969. When he left in 1969, he withdrew his contributions from the Government pension plan. In 1974, he joined the public service again and is still a government employee. His complaint was that the Superannuation Branch did not give him permission to buy back his years of service between 1962 and 1969 for pension purposes.

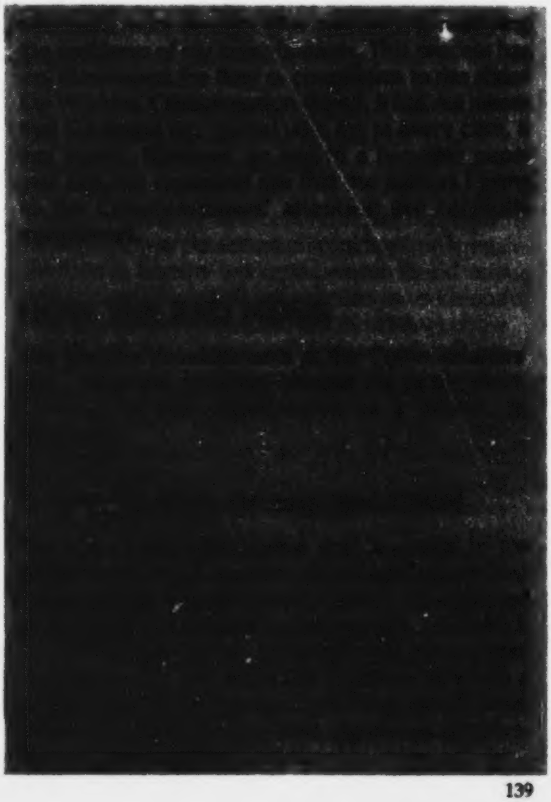
I examined the provisions of the *Pension (Public Service) Act*, and found that the complainant did not meet the reinstatement provisions set down in the statute. The statute, however, also contains a section under which Cabinet can make exceptions.

I recommended to the Superannuation Commissioner that he refer the complainant's request to Cabinet for the exercise of its discretion. I felt that the Superannuation Commissioner, a public servant, should not make decisions which, by law, are to be made by Cabinet.

The Superannuation Commissioner accepted my recommendation and undertook to forward the complainant's request to Cabinet. (CS 82-226)

WORKERS' COMPENSATION BOARD





A substantial loss

One adjudicator deprived a worker of $23,000 when he awarded the wrong type of benefits. The worker had an ankle injury and was paid wage loss benefits for nearly a year. These benefits were terminated when his condition was considered stable and he was to be assessed for a permanent pension. Two years later, a pension was finally awarded retroactively.

After reviewing the medical evidence, which strongly suggested that this worker's condition was not stable or permanent during the two-year period when no benefits were paid, I recommended that he be given temporary partial disability benefits instead. These benefits are appropriately paid when a worker is no longer totally disabled but his condition has not yet stabilized. A permanent pension is paid when a worker's disability is both permanent and stable. The Board accepted my recommendation and paid the difference between the pension and temporary partial disability benefits. That difference was $22,961.84. (CS 82-227)

Bureaucratic nightmare

Another adjudicator denied a worker's request for a reopening of his claim, wrongly assuming that the Commissioners had already made a decision about the cause of his disability. The Commissioners had not made that decision. They had only decided not to pay for the worker's chiropractic treatment. The adjudicator's refusal to reopen the claim plunged the worker into a Kafkaesque bureaucratic nightmare. He attempted to appeal the adjudicator's decision to a Medical Review Panel and was advised by the Board's legal administrator that he had missed the time limit for an appeal because the only "medical" decision had been made two years ago. The legal administrator advised the worker that his decision about the missed time limit could be appealed to the Boards of Review. The worker wrote back to the legal administrator stating that he wanted the matter appealed to the Boards of Review. Four months later, the legal administrator advised the worker to appeal "directly" to the Boards of Review. The worker did so and was told that he had missed the deadline for appeal to the Boards of Review. Moreover, no extension of time would be allowed because he had insufficient reasons for missing the time limit, and there was little merit in his appeal. Eventually, the worker complained to me, and I recommended to the Commissioners that this claim be reconsidered on its merits. My recommendation was accepted.

The same adjudicator was directed to review the claim on its merits, but recently decided to deny his request for reopening. I am not convinced at this point that all relevant aspects were considered by the adjudicator, and have asked that the recent decision be checked thoroughly before I advise the worker further. (CS 82-228)

[illegible]

[illegible] of a work injury if the worker had a [illegible] condition, even if it [illegible] prior to the date of injury.

Back problems

A nurse strained her back while lifting a patient at work. The Board denied her claim because she had had some prior back problems, and because she had delayed reporting her injury and had not sought medical advice early enough. I found the worker's doctors unanimous in the opinion that her back strain was due to her injury at work. I also obtained letters from the worker's colleagues supporting her claim that she had been injured at work. The Board agreed with my recommendation and accepted the worker's claim to the extent that her work injury had aggravated her prior back problems. (CS 82-229)

More back problems

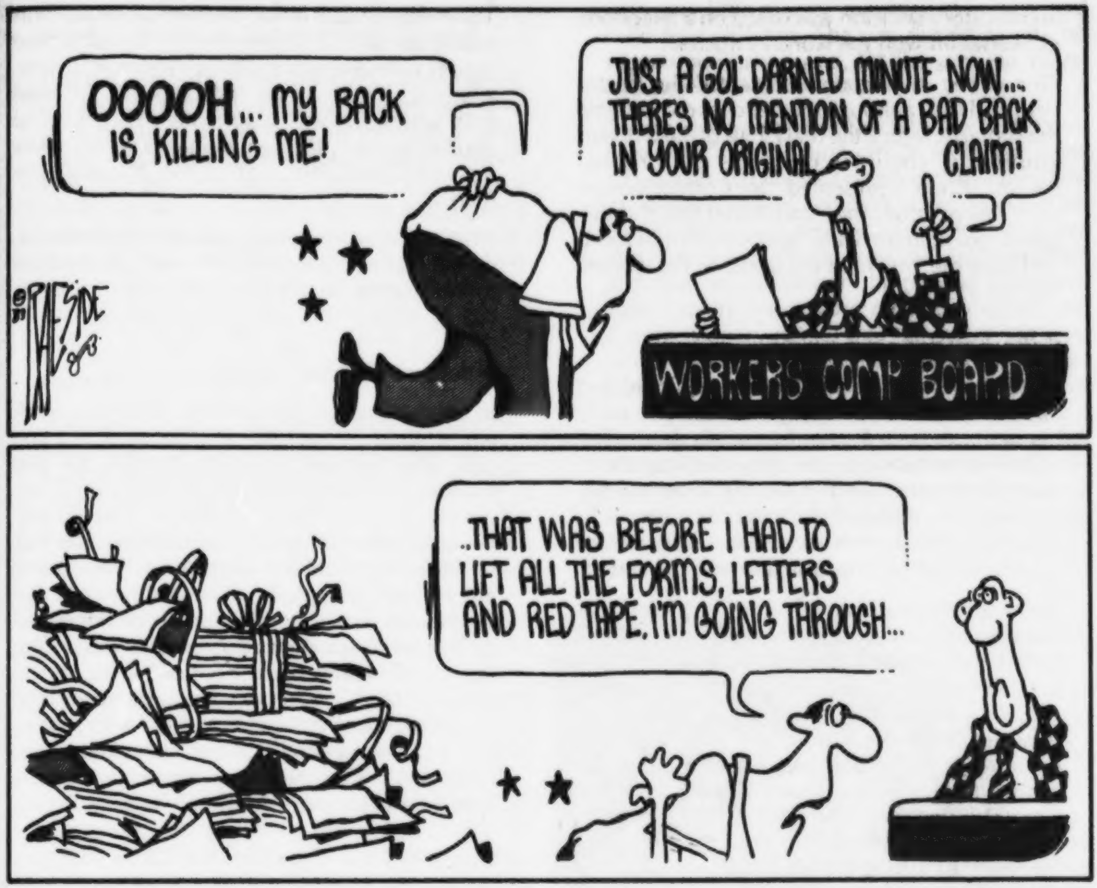
Another worker strained his back at work. The Board accepted his claim for an aggravation of a prior condition. The worker underwent a spinal fusion, for which the Board paid. Although the fusion resulted in a permanent restriction of movement, the Board refused to pay him a partial disability pension.

It is Board policy that, if a pre-existing disability is permanently aggravated by a work injury, the Board must pay a pension for the aggravated portion. Despite the operation this worker had not been restored to his pre-injury condition. It appeared to me that the Board had not considered whether his aggravation was temporary or permanent.

In response to a recommendation from me, the Board agreed that the worker's injury had permanently aggravated his pre-existing condition. Therefore, the Board paid the worker a pension which amounted to $26,283.89 retroactively and $79.37 per month in the future. As a result, the worker was able to fulfill his life-long dream which was to purchase his own home. (CS 82-230)

Even the Ombudsman is wrong on backs

A worker was struck in the lower back by a truck. He complained to me when the Board refused to accept his claim for compensation.


OOOOH... MY BACK IS KILLING ME!
JUST A GOL' DARNED MINUTE NOW... THERES NO MENTION OF A BAD BACK IN YOUR ORIGINAL CLAIM!
WORKERS COMP BOARD
©RAESIDE 8/83
..THAT WAS BEFORE I HAD TO LIFT ALL THE FORMS, LETTERS AND RED TAPE, I'M GOING THROUGH...

Initially, I decided that the worker's complaint was not substantiated. I provided him with the reasons for my decision which prompted him to visit my office to express his objections (loudly). After considering the worker's comments, I decided to review my investigation of his complaint. Because there were only two medical opinions available, neither from a specialist, I obtained an opinion from an orthopedic surgeon. That opinion supported the worker's conviction that his prior back problems had been aggravated by the truck's blow. When I provided the Commissioners with the surgeon's opinion, they reconsidered their decision and accepted the worker's claim. (CS 82-231)

[redacted]

Which date applies?

In calculating benefits, the Board exercises its discretion in deciding which time period in the past best represents a worker's real earnings. One worker complained that the pension awarded to him, following a work injury, was based on his earnings during the three years prior to the assessment of his pension, rather than the three years prior to his injury. When I brought the matter to the Commissioners' attention, they decided to pay the worker a pension based on the statistical average for construction workers prior to the date of his injury. (CS 82-232)

[redacted]

Benefit of doubt

When a worker injured his shoulder at work, his claim was accepted by the Board. Approximately one year later, the worker injured his shoulder again but the second injury was not considered severe enough to prevent him from working. Furthermore, the adjudicator decided that any continuing shoulder complaints were not related to either of his injuries but rather to his use of crutches for a back problem. The adjudicator's decision was based on a telephone conversation with the worker's doctor.

One of my investigators contacted the doctor who said that, although the crutches did not help the shoulder injury, the real cause of the worker's continuing shoulder pain was the original sprain. When I presented the Commissioners with this opinion, they concluded that the disputed possibilities were now evenly balanced and gave the benefit of the doubt to the worker. (CS 82-233)

Correct decision

In another case, I concluded that the Board had applied section 99 correctly in refusing to compensate a woman for her husband's death. The widow complained to me about the Board's refusal to compensate her for the death of her husband who had died of cancer of the stomach. She felt that his death was caused by his exposure to polyester at work over a thirteen-year period.

Although the available literature suggested that there was some carcinogenic effect from plastic (which includes polyester), the pathologist could find no trace of polyester in the worker's stomach. One doctor concluded that a relationship between the worker's death and his exposure to polyester might be possible. Another doctor described the possibility of such a relationship as extremely tenuous. I did not feel that the Board had erred in deciding that the possibilities concerning the cause of the worker's death were not evenly balanced. I decided that the widow's complaint could not be substantiated. (CS 82-234)

3. [illegible] CONSIDERATIONS

[illegible]

Immoral life

I investigated a complaint from a woman whose husband was killed in a work accident in 1954. Although she initially received a pension from the Board for the death of her husband, it was suspended in 1956 for approximately two and a half years, on the basis of a section of the *Workmen's Compensation Act* which gave the Board the right to suspend or cancel the compensation of anyone who was leading "an immoral or improper life". This section of the Act was later repealed.

I found that the exact reason for the Board's suspension of compensation in this case was not clear, but it appeared that my complainant was suspected of being a prostitute or of living in a common-law relationship. The evidence supporting the pension suspension was scant and consisted mainly of subjective reports concerning the widow's social activities. Although a note on file indicates that the man with whom she was supposedly living married another woman, the complainant's pension was not reinstated until several months after the marriage.

The Commissioners accepted my recommendation to reconsider the widow's case and decided to reimburse her in full, and with interest. (CS 82-235)

A doctor's personal opinion

In another case, a woman was injured at work while lifting a wheelchair into the trunk of a taxi cab. She received wage loss benefits for five months. She later had an operation which revealed a spinal disc herniation. The Board, however, decided that this condition was not related to the work accident. After investigating the woman's complaint, it was my opinion that the Board's decision was improperly influenced by a Board doctor's personal opinion regarding the medical ability of the woman's physician. As a result of this irrelevant consideration, the Board improperly discredited the doctor's opinion. I recommended that her claim be reconsidered. The Commissioners agreed to refer the woman's claim to a Medical Review Panel. (CS 82-236)

4. KEEPING CLAIMANTS INFORMED

Much of my work as Ombudsman is directed at improving communications between the bureaucracy and the public. For example, claimants should be clearly advised of any impending changes in their benefits.

More information, sooner

I received a complaint from a woman who had been receiving a widow's pension for herself and her two children. She expected that when her last child left school, her pension would be reduced by the amount of that child's benefits. This "$400 per month reduction" took effect 12 days after her notice to the Board that her last child had left school. The complainant suggested to me that she should have been given more information. The only information she had received was a calculation sheet shortly after her husband's death.

The formula for calculation of a widow's pension is complex. A comprehensive statement should have been given to the widow, outlining the factors that would be considered when her pension was recalculated. That way, she would have been able to prepare for any changes in her pension benefits as circumstances changed.

I recommended that the Board inform widows of the factors which will lead to a restructuring of their pensions at the time the pension is originally calculated. In addition, I recommended that the Board program its computer to produce a letter one year in advance of each dependent's 18th birthday, alerting the widow to an impending reduction in her pension when the child leaves school. The Board accepted these recommendations. (CS 82-237)

Form letter redrafted

Another case involving insufficient information, concerned the procedure followed by the Boards of Review in deciding whether to grant an extension of time to appeal.

I found that when a claimant requests an extension of time to appeal, the Boards of Review consider both the reasons for his failure to launch an appeal within the statutory time limit and the likelihood of success with the appeal. In one of the form letters used by the Boards of Review to solicit this information, the worker was not informed that the merits of his case would be considered. Consequently, the worker was not given an opportunity to present the merits of his case; with the possible result that an extension of time would be denied, where it might have been granted had the worker presented the merits of his case.

The Boards of Review sent me a copy of another of their standard form letters which are sent to appellants seeking an extension of time to appeal. This letter mentioned that a brief assessment of the merits of the appeal is considered. Upon reviewing the letter, I suggested that the worker be invited to make a submission concerning the merits of his claim. The Boards of Review redrafted the deficient form letter in accordance with my suggestion. (CS 82-238)

5. INADEQUATE INVESTIGATION

It is important that adjudicators know all the facts before arriving at a decision. The following case is an example of an injustice perpetrated on a citizen because those sitting in judgment did not obtain sufficient information before reaching a decision.

Justice—25 years late

Mrs. Splett complained that her 1957 application to the Board for widow's benefits was refused on the grounds that her husband did not die in the course of employment. Mrs. Splett, with very little money, managed to survive and raise four children. She was forced to rely on income assistance and, for the past ten years, had worked in a fish cannery.

Twenty-five years after the fact, my staff completed an investigation which included interviews with 30 people. I concluded that the complainant's husband had died in the course of his employment and recommended to the Board that Mrs. Splett's children be paid compensation and that her entitlement be reviewed as well. After initially rejecting my recommendation, the Commissioners agreed that Mr. Splett had died while working, but they were uncertain whether Mrs. Splett and her children were dependents of Mr. Splett. The Commissioners conducted a hearing and concluded that, at the time of her husband's death, Mrs. Splett was partially dependent and her children were totally dependent on Mr. Splett. As a result of this decision, Mrs. Splett and her children received compensation benefits retroactive to 1956, plus interest. (CS 82-239)

Mrs. Splett

All criteria met

In another case, I found fault with the Board's refusal to accept responsibility for a worker's respiratory problems. The Board decided that the worker's problems were caused by bronchitis and asthma, not exposure to gases, but failed to explore the cause of his bronchitis or asthma.

I drew the Commissioners' attention to section 6 (3) of the *Workers Compensation Act* which has two requirements: one, a worker must be disabled due to a disease, and two, he must be employed in a processing industry. Both the industry and the disease must be listed under Schedule B. If these criteria are met, the disease is deemed to have been caused by the worker's employment, unless the contrary is proved.

I felt that this worker's case met the criteria, since asthma and respiratory irritation, and the industry in question, were included in Schedule B.

To clarify the controversy between myself and the Commissioners about the cause and nature of the worker's condition, the Commissioners agreed to refer the matter to a Medical Review Panel. The Panel found that the worker did, indeed, have a respiratory disability. It also found that the inhalation of chlorine gas at work had resulted in a chronic bronchiolitis, which was the major component of his present disability. The Panel also found that smoking was a contributing factor in his respiratory disability. Because of the Panel's decision, the Board will be paying the worker retroactive wage loss and a pension. (CS 82-240)

6. THE ASSESSMENT DEPARTMENT

Not surprisingly, the depressed economic conditions during 1982 gave rise to an increase in employer complaints against the Board's Assessment Department; every penny counts. I succeeded in bringing about some improvements to the Assessment Department's procedures. For example, the Board has agreed to make the Assessment Department's Policy and Procedure Manual available to the public. This information was previously confidential.

Unfair procedure

Another change resulted from my investigation of a complaint from an employer about the procedures the Commissioners follow in hearing appeals from employers on Assessment Department decisions. I investigated whether the Board's refusal to provide employers with access to the Assessment Department's submission constituted a denial of natural justice. I concluded that the procedure was unfair, because it allowed the Assessment Department access to the employer's submission, while denying the employer access to the Assessment Department's submission.

The Commissioners agreed that if the Assessment Department makes comments to the Commissioners, a copy of those comments will be provided to the employer. The Commissioners promised to establish a procedure, whereby employers will be notified automatically of their right to review the Assessment Department's submission. (CS 82-241)

A call is enough

I became concerned about apparent gaps in the Board's optional coverage when an injured contractor complained that because of procedural problems he was not compensated for an injury. The contractor was injured after he had called the Board to request personal optional protection, but before the Board had received his application form.

According to the Board's policy, coverage was not effective until it received a signed application. I recommended that coverage be effective for a specified period after an applicant's phone call to the Board requesting coverage. The Commissioners agreed to this procedural change. Meanwhile, the contractor won an appeal to the Boards of Review. (CS 82-242)

Businessman feels crunch

Many complaints about the Assessment Department came from small businesses which were feeling the economic pinch. In one case, the Board instructed the Sheriff's office to serve a Writ of Seizure against the owner of a small business who was behind in his assessment payments. The financially hard-pressed employer complained to me that the Board had acted oppressively in instructing the Sheriff to serve the Writ before determining the economic state of his company, or exploring the possibility of a repayment scheme.

I found that the firm had not paid its assessments for more than a year. The Board had sent monthly statements to the firm and had visited the premises once but the employer was not at home at the time. Another ministry of the Government had also issued a Writ against the employer for failure to make payments. The employer had negotiated a repayment schedule with the Sheriff, but had not met his obligations under it. When the other writ arrived, the Sheriff decided to enforce both more vigorously and seized goods necessary for the company to operate.

I found the Sheriff willing to close his file if the employer could make arrangements with the Board for repayment. The Board was willing to work out a repayment plan for the employer's next bill but the Board felt there was nothing it could do about the Writ which was in the hands of the Sheriff. By this time, the employer had decided to proceed with an orderly wind-down of his company. At this point, I decided to withdraw from the case because further investigation would be of no benefit to the complainant. (CS 82-243)

7. INDUSTRIAL HEALTH AND SAFETY

Although I received only a relatively small number of complaints about the Industrial Health and Safety Department, I initiated several investigations in this

area. It is rewarding to rectify problems but it is even more worthwhile, economically and in terms of potential human suffering, to prevent their occurrence. For this reason, I welcome the complaints of unions, employers, and workers to assist me in recommending improvements to this aspect of workers' compensation.

8. THE CRIMINAL INJURIES DEPARTMENT

The Workers' Compensation Board administers the *Criminal Injuries Compensation Act* under which victims of crime may be compensated. The following case shows that improvements can be made in the administration of this function.

Interim award for rape victim

A rape victim complained to me that the Board refused to compensate her until the trial of her aggressor had been completed. After investigating her complaint, I informed the Board that the woman should receive the interim payment provided for under the Act. I urged the Board to consider the financial circumstances of victims of crime when deciding whether or not to make interim payments. The Board reviewed the matter and made an interim award to the woman. (CS 82-244)

9. INTER-PROVINCIAL BUCK PASSING

It is the misfortune of some workers not only to be injured twice but to be injured in different provinces. When this happens, they run the risk of becoming victims in a game of inter-provincial buck-passing.

Sandwiched between boards

One worker complained to me that he had not been awarded a pension for a back injury he had suffered in B.C. The worker had previously injured his back in Alberta. Both the B.C. and Alberta Workers' Compensation Boards refused to accept responsibility for his back disability.

The worker had suffered numerous fractures and contusions when he fell 40 feet from a scaffold in Alberta. He was eventually awarded a pension for a disabled leg and knee only. The worker injured his back again, this time in B.C. The B.C. Board refused to award him a pension because it considered that his lingering back problems had existed before his injury in B.C.

To assist me in my investigation, I obtained a specialist's opinion. The specialist concluded that the worker's condition was due partly to his Alberta injury and partly to his B.C. injury. I wrote to both the B.C. and the Alberta Workers' Compensation Boards and requested that they consider dividing responsibility between them. The Alberta Board referred the matter to a panel of three medical specialists who decided that one-third of the worker's permanent disability was due to his Alberta accident, whereas the remaining two-thirds of his disability resulted from his B.C. accident. The Alberta Board accepted responsibility for one-third of the worker's disability. Eventually, the B.C. Board agreed to accept two-thirds responsibility although it reserved the right to measure the extent of his disability. (CS 82-245)

Bureaucratic shuffle

In another case, a worker complained to me about the B.C. Workers' Compensation Board's refusal to award him a pension. The worker had been injured a number of times in Alberta but the Alberta Board concluded that he had no permanent disability. When he was later injured in B.C., the B.C. Board refused to award him a pension because of his prior back problems.

I concluded that the procedure used in denying the worker a pension was unfair because both provincial Boards had avoided accepting responsibility by finding the injury which occurred in the other province to be the more likely cause of his disability. I recommended that the B.C. Board discuss the claim with the Alberta Board and divide responsibility between them. If no agreement could be reached, I recommended that the Commissioners of the B.C. Board refer the claim to a Medical Review Panel. This proved to be unnecessary because each Board agreed to accept 50 per cent responsibility for the worker's disability. (CS 82-246)

10. THE BOARDS OF REVIEW

The Boards of Review are part of the workers compensation system in British Columbia. They are established by the Ministry of Labour and are, for administrative purposes, part of that Ministry. I will discuss complaints about the Boards of Review here because they constitute the first step in the compensation appeal process.

I have discussed earlier in this report the unreasonable delays experienced by all Boards of Review appellants.

Hardship makes the difference

I managed to speed up the Boards of Review in the case of a worker who was completely incapacitated, financially and physically, and in great pain. I drew the attention of the Boards of Review to the man's hardship. The Chairman replied that in cases of hardship beyond that normally experienced by workers waiting for appeal hearings, the Boards of Review may speed matters up by hearing the appeal in the place of a normally scheduled hearing which has been cancelled. My complainant's case met the criteria, and the hearing was held the following month, instead of seven months later, the previously predicted waiting period. (CS 82-247)

One year's delay

A worker had submitted his appeal in September 1981. A hearing was held seven months later. One year later, he had still not received notice of a decision. In June 1982, one of my investigators was told by the Boards of Review that the Chairman would make a decision as soon as possible; he had only to dictate his decision. In July 1982, another investigator was told that the Chairman was on holiday, and that a decision would not be available until at least September.

I considered a one-year delay unreasonable and when I contacted the Boards of Review for the third time, I was advised that the worker had been informed of the decision by mail. In a letter to me, the Administrative Chairman stated "that there appears to be no undue delay in the completion of this decision, compared with other cases currently before the Boards of Review." That really spelled it out for me. (CS 82-248)

Effort not good enough

The response of the Boards of Review to my recommendations is aggravating. In one case, the Workers' Compensation Board decided not to give a permanent pension to a worker with a knee disability. The worker appealed to the Boards of Review which decided that his knee problems were related to an underlying disease of his knee and not to his injury at work.

I investigated the case and found that three medical opinions supported the conclusion that the worker's problems were related to his work injury while two medical opinions indicated that his problems were due to a non-work-related disease. It appeared to me that there was considerable doubt about the case and the disputed possibilities were at least evenly balanced. In situations such as this, section 99 of the *Workers Compensation Act* requires that a decision is made in the worker's favour.

In May 1981, I submitted my findings to the Boards of Review because it appeared to me that they had erred in failing to give the worker the benefit of the doubt. For many months, the Boards of Review disputed my jurisdiction. In frustration, I referred the matter to the Commissioners of the Workers' Compensation Board. They agreed to reconsider the worker's claim and in the end, gave him the benefit of the doubt. It took me a year and a half to resolve this complaint and I attribute this delay solely to the Boards of Review. They refused to consider the merits of the issues I raised in this case. (CS 82-249)

IN CONCLUSION

The Workers' Compensation Board has been the subject of much criticism in the past few years. But there are signs of change. I believe the main reason for this is a greater sensitivity at the Commissioner level to the problems of British Columbia workers. The workers' compensation system is still backlogged, but the present Chairman and Board of Commissioners appear serious about addressing the problems which beset workers' compensation in B.C. My hope now is that the spirit which I perceive at the top will filter down and touch the entire organization.

NON-JURISDICTIONAL AUTHORITIES

NON-JURISDICTIONAL COMPLAINTS

People often turn to my office for help in areas which are not within my jurisdiction [illegible] but will be when the remaining sections of the Ombudsman Act are proclaimed. [illegible] I receive complaints against municipalities, usually at an early stage of the problem. I [illegible] persons to a higher level in their municipality such as an alderman or councillor.

I also receive frequent complaints from persons who are frustrated with the federal bureaucracy, particularly the Unemployment Insurance Commission. Often the person [illegible] tion or assistance in [illegible] the [illegible] of the forms.

Pension secured

Although the complaint concerned a federal matter, my office was asked to assist in an application for an old-age security pension. The applicant was frustrated in her attempts to prove her eligibility to meet the required residency period in Canada and brought her frustration to me.

Although the complainant had worked for substantial periods of time in overseas embassy offices, the exact dates could not be verified because personnel records were destroyed in Ottawa.

My office assisted in obtaining confirming letters from several sources, and in finding supporting personal documents to verify time spent in Canada. Our complainant received her full pension and retroactive payments of $5,566.71. (CS 82-250)

[redacted]

Where are the medical records?

A letter from an anxious mother in an isolated area expressed her concern that neither she, nor her family physician had received reports on tests performed on her child by a city doctor. Although uncertain about my jurisdiction in this issue, I contacted the doctor to bring her concern to his attention. The consulting doctor looked into the matter and learned that the material he thought had been requested by his hospital for forwarding to the mother had, in fact, been requested for hospital administrative purposes.

The doctor then contacted the family physician to discuss the matter and through the family physician, he invited the mother to phone him directly in the city. He also dictated an extensive case summary on the child and saw to it that all the reports in his and in the hospital's possession were forwarded to the family physician in the rural area (CS 82-251)

[redacted]

Baffled deserter

A man complained that the Army had failed to provide him with discharge papers when he left the military. He recalled that military law stipulated that the papers be provided within 21 days of termination of service. He needed the papers to find new employment.

The complainant was asked if he had contacted the Army to determine why the papers had been delayed. He said that he had not done so and that he would prefer to have me investigate. He then explained that he had deserted. The complainant was referred to legal aid. (CS 82-252)

Have bus, will travel

Most cities operate a satisfactory transit system within their boundaries for the benefit of their residents. When a major employer is located outside the city limits, greater problems are encountered in attempting to serve all people.

A complainant who, for physical reasons, was not able to drive a car, said he had great difficulty getting to and from his place of work, just outside the city limits because the bus schedule was not in tune with his shift work.

My inquiries revealed that the bus schedule was set by a municipal transit board, which was beyond my jurisdiction. I learned, however, that his employer, a large mining company, welcomed additional bus service to the site. Parking was becoming more and more of a problem to the workers, so they supported my complainant's request to the Transit Board for improved services. The mayor of the town said that further attention should be given to the question of providing bus service at more suitable times for shift workers, particularly during the early morning hours.

Eventually, a consensus was reached, and a new schedule was implemented which proved more convenient for my complainant and his fellow workers.

This is an example of how people's needs can be met if those involved are convinced that a problem can be solved and then set about doing it. My role was that of a facilitator. (CS 82-253)

Frustrations eased

In the latter half of 1982, a job-creation program called EMPLOYMENT BRIDGING ASSISTANCE PROGRAM (E.B.A.P.), was introduced jointly by the Governments of Canada and British Columbia. Under this program, a project and budget are submitted by an employer, usually a logging company or a native Indian band, to the government authorities. An assessment is then made by the provincial Ministry of Forests and by the federal government's Canadian Forestry Service and Canada Employment and Immigration Commission (C.E.I.C.). To qualify for the program, a person must be receiving Unemployment Insurance benefits. If a project receives approval by all parties, eligible employees are hired. Every two weeks, employment cards are sent or taken by the project manager to the nearest C.E.I.C. office which, in turn, sends them to head office in Vancouver. An employee has his Unemployment Insurance benefits "topped up" through contributions shared by the provincial and federal governments (in proportions of approximately 1 to 3). The calculations must be done manually, and C.E.I.C. is in charge of the administering of the program. Responsibility for worker benefits and equipment is assumed by the sponsoring employer.

I have received many complaints about the program, both during the preliminary steps of obtaining approval, and with respect to the delay encountered by workers receiving their cheques. With regard to the former, inquiries are made to determine the stage of the application, and then attempts are made to alleviate the frustration of people who want to work but are not told when they might be able to start a project.

The Ministry of Forests appears to have been prompt in its role of approving applications.

The processing of the payment of workers' wages is the responsibility of C.E.I.C. and it does not appear to have been carried out efficiently at all times. My inquiries to appropriate offices, however, have speeded up the process and if any further delay is expected, the complainant is told how long the delay might be. (CS 82-254)

Promises, promises

In British Columbia, the *Residential Tenancy Act* requires that a landlord return a security deposit plus interest to the tenant within 30 days after the tenancy ends.

A young woman phoned my office to ask for help getting her security deposit back. She had just moved from Alberta to B.C., and her former landlord, who was a resident of B.C., would not return her deposit and he had also stopped returning her phone calls.

I found that Alberta did not appear to have an enforcement agency to which I could refer her. After several attempts, we reached the landlord and urged him to return the deposit promptly. He promised to do so, but the tenant did not receive it.

Finally, after further prodding, the deposit and interest were returned to the complainant. (CS 82-255)

Double x-ray

A man who had injured his back was x-rayed at a regional hospital at the request of his doctor. Subsequently, he wished to receive the services of another professional he believed could assist in his recovery. He asked for the x-rays but the hospital refused to give them to him. My complainant did not wish to incur the expense or the radiation to get a second set of x-rays.

I informed the complainant that by statute, a patient's records which are prepared in a hospital, are the property of the hospital. I told him, however, that there are cases in law supporting his right to be informed, to see and make copies of his records. In the case of x-rays, it would be impossible to make a copy but I suggested that he and his new professional consultant should be able to view them.

The hospital agreed to allow this procedure and the problem was resolved. (CS 82-256)

Housing priorities

I received an urgent request from a native Indian to act as an advocate for his old mother who wished to move into a new home on the Reserve. He stated that she was living in very poor housing with no water or electricity and he was afraid for her safety, particularly in the winter.

I explained to him that I do not have the jurisdiction to investigate a complaint of this nature and that it is the responsibility of a Band Council to decide who should be placed in houses under the Council's authority. I brought the complaint to the attention of the Band Council and asked the members to consider the woman's needs when they assessed the people interested in the available homes.

The Band Council replied that a number of Band members lived in substandard housing but agreed to place the name of my complainant's mother on the housing priority list. (CS 82-257)

PART IV

CHANGES IN PRACTICES AND PROCEDURES ACCEPTED BY AUTHORITIES

MINISTRY OF ATTORNEY GENERAL

1. The Ministry agreed to display two new 'notices' in all Small Claims Court Registries. One informs the public of appeal rights, and the time period for their exercise; the other informs all creditors that a debtor may exempt from execution personal belongings worth up to $2,000. (CS 82-002, 003)
2. A Lower Mainland Court agreed to revert to normal business hours after answering telephone enquiries between 3 p.m. and 4 p.m. only. (CS 82-004)
3. A non-jurisdictional complaint about difficulties in obtaining a peace bond resulted in Chief Judge Goulet's offer to include this issue in the next training session for Justices of the Peace. (CS 82-011)
4. The Ministry agreed to propose an amendment to the *Private Investigators and Security Agencies Act* to clarify what information can be divulged in the 'administration' of the Act.

CORRECTIONS BRANCH

1. The Corrections Branch has agreed to inform newly sentenced inmates in writing of the sentence they must serve and the remission which may be earned while serving the sentence.
2. The Branch agreed that if an inmate is refused a transfer or is transferred against his or her will, the Director of Provincial Classification will give written reasons. The Branch also included in its Manual of Operations a comprehensive outline of provincial criteria for classifying prisoners to prevent errors in placing inmates. (CS 82-018)
3. The Branch reviewed its dental standards for provincial correctional institutions. As a result, it will, over the next 18 months, upgrade current standards and provide direct access by inmates to dental practitioners. (CS 82-031)
4. The Branch has adopted clearer guidelines governing the safe-keeping of money belonging to incarcerated persons.
5. A secure Correctional Centre reviewed and revised the handling of privileged mail within the institution after a letter from the Ombudsman to an inmate was opened by mistake.
6. The Director of a secure Correctional Centre was provided with 75 copies of the full text of the Correctional Centre Rules and Regulations and instructed to make the complete text available to all inmates admitted to his centre. (CS 82-021)
7. The Director of the religious programs section and chaplains at Lower Mainland Regional

Correctional Centre agreed that Native Indian religious ceremonies would be open to any inmate who wished to attend just as Protestant and Catholic services are open to any inmate without regard to their denominational affiliation. A service for adherents only will be held at the insistance of the participants themselves. (CS 82-030)

8. A District Director, with the help of his local directors tightened up procedures for imposing a lockup of an inmate according to the Rules and Regulations. (CS 82-020)
9. The Corrections Branch revised its Policy Manual to require the Director of Inspection and Standards to ensure that a complainant has access to the appropriate R.C.M.P., local police force, or a Justice of the Peace in matters where criminal charges may be laid. (CS 82-022)
10. Effective August 1, 1982, the service delivery standards of the Corrections Branch include reference to the use of fire-resistant paint in all institutions.
11. The Corrections Branch introduced uniform procedures and forms to raise the standard of administrative justice in the conduct of disciplinary hearings in provincial institutions.

VICTORIA YOUTH DETENTION CENTRE

The Ministry agreed to implement a number of administrative changes at the Victoria Youth Detention Centre. Some of these changes were:

1. The Ministry agreed to establish an effective grievance procedure for residents at the Centre.
2. The Ministry agreed to assign another staff member to afternoon supervision which will give residents a greater opportunity to select their own activity during 'free time'.
3. The Ministry agreed to process money in residents' accounts twice a week, instead of once a week, so residents earning money will have the money in their accounts to spend as soon as possible.

MINISTRY OF CONSUMER AND CORPORATE AFFAIRS

1. The Registrar of Companies reviewed his prepayment policy for searches and agreed to establish prepayment accounts in amounts as low as $10.00 for clients who use search services infrequently. (CS 82-046)
2. The General Manager of the Liquor Control and Licensing Branch made a policy change that permits cabarets to serve draft beer. (CS 82-048)
3. The Central Registry assured me that it is monitoring the number of telephone inquiries it receives and that, if necessary, it will attempt to add additional staff to its telephone search unit.

RENTALSMAN

The Rentalsman issued a policy guideline to all his staff advising them that certain practices, too frequently the subject of complaints, were not consistent with the minimum standards of courtesy and fairness expected of public officials — specifically, failure of Rentalsman Officers to make decisions, send letters or return phone calls when promised or within a reasonable period of time; and failing to advise parties when promises cannot be kept. (CS 82-033, 034, 035)

MINISTRY OF ENERGY, MINES AND PETROLEUM RESOURCES

1. The Ministry agreed to formalize procedures to be followed in cases where an individual alleges either bias or conflict of interest on the part of a Ministry employee.
2. The Ministry agreed to record all evidence considered by the decision-maker in cases of appeals related to mineral claims.
3. The Ministry also agreed to notify appellants that a postponement of a hearing can be requested when good reasons exist to do so.
4. The Ministry agreed to clarify in the placer mining brochure the requirements for staking a mineral claim.

MINISTRY OF ENVIRONMENT

1. Following my investigation of a complaint about the issuing of a pesticide permit, the Ministry took some steps to change its procedures. These included the standardization of newspaper ads describing permits, and a revision of the permit application form. Still under consideration are a requirement that neighbouring landowners be notified of any proposed pesticide treatment project; an upgrading of posting requirements; and an attempt to increase the level of permit site inspections to include about 20% of all permits issued. (CS 82-060)
2. In the area of water management, in cases where individuals make appeals to the Comptroller, as provided by the *Water Act*, the Ministry agreed to notify potentially-affected third parties that an appeal had been lodged. This will enable such parties to make representations to the Comptroller as well, should this be necessary in order to protect their interests. (CS 82-062)

MINISTRY OF FINANCE

1. The Minister of Finance agreed to pay the meal and travel expenses of a member of the 1982 Court of Revision. The instructions given to members of the 1982 Court of Revision were consistent with those given in previous years, when such expenses were paid. (CS 82-075)
2. The Ministry agreed to make a number of changes to the procedures of the Courts of Revision to correct inadequacies which had come to light during 1982. (CS 82-074)
3. The Ministry agreed to change the period during which it pays interest on funds paid into Court. (CS 82-076)
4. The Ministry corrected the wording on business licences issued to vendors for the purpose of selling goods at a roadside stand. The earlier wording appeared to give the vendor a licence to operate in contravention of the *Motor Vehicle Act*. (CS 82-078)

MINISTRY OF FORESTS

1. The Ministry agreed to advise persons of their appeal rights. Pamphlets giving general information on appeal rights are to be given to all individuals entering into agreements with the Ministry under either the *Forest Act* or the *Range Act*. (CS 82-084)
2. The Ministry instituted a new procedure for the delivery of pay cheques to employees in remote locations. Their cheques had been late on a number of occasions. The new procedure should result in more reliable delivery of cheques.

MINISTRY OF HEALTH

1. The Ministry of Health reduced from 38 to 35 years the age at which pregnant women are covered for the cost of amniocentisis. (CS 82-089)
2. The Ministry agreed to purchase new equipment to evaluate the demand placed on the telephone system. This will allow the Ministry to reassign staff to reduce the number of people put on "hold" when calling Medical Services Plan. (CS 82-088)
3. The Ministry instructed its staff to forward all inquiries from the public about coverage for medication directly to Pharmacare and to inform the public that Pharmacare, not M.S.P., is responsible for the coverage of medication costs.
4. The Ministry agreed to establish guidelines for a public tender system for homemaker agencies applying to provide services in metropolitan centres. (CS 82-094)
5. The Ministry established a list of information required from the Ministry of Transportation and Highways approving officer to speed up the Public Health Officer's review of subdivision applications. Now a subdivision applicant will know what information he must present to the approving officer. (CS 82-096)
6. The Ministry placed a notice in the Vancouver jail informing prisoners that medical examinations are voluntary and that conversations with the Provincial Health Nurse are private and confidential.
7. The Ministry's Division of Vital Statistics, agreed that where a birth was registered without the father's name recorded on the birth certificate, the Director of Vital Statistics, on receipt of the original acknowledgment of paternity form would exercise his discretion under the *Vital Statistics Act* to correct the error on the registration of birth by adding the father's name and address.
8. Vital Statistics also agreed to proceed with the registration of a birth in situations where the parent objects to providing information on the registration form that is of statistical value to the Division but does not directly pertain to the birth in question, such as "how many children have been still-born?"
9. Vital Statistics agreed to consider third-party information to confirm paternity if the natural father dies before the child is born. (CS 82-097)
10. Vital Statistics agreed that all women divorced in Ontario or Alberta may legally use their maiden name in B.C. without having to go through formal change-of-name procedures. (CS 82-099)
11. The Dental Technicians Board agreed to modify its procedures in examining candidates for registration as dental technicians to ensure that more than one examiner evaluates each candidate, that each examiner records the basis on which she or he arrives at an evaluation of the work, and that, on request, the Board will provide unsuccessful candidates with information on areas of weakness in the examination process. (CS 82-103)

MINISTRY OF HUMAN RESOURCES

1. The Ministry agreed to make it clear to its line staff that they must not, by law, disclose information about their clients to other people or agencies, including the clients' physicians (or other professionals) without the approval of the client.
2. The Ministry agreed to instruct, where necessary, all clerical staff not to tell applicants for

income assistance that they have made or are in any way empowered to make decisions on eligibility for assistance.

3. The Ministry decided to clarify that student loans or grants provided in co-operation with Human Resources and Education are not to be deducted from income assistance benefits.
4. The Ministry eliminated the policy of designating areas of the province as "areas of limited work opportunity" and basing eligibility for assistance on whether the applicant lives within an area so designated. (CS 82-105)
5. The Ministry changed its policy of allowing only the male partner to apply for assistance on behalf of the family. Now the principal wage earner may apply for income assistance. (CS 82-106)
6. The Ministry agreed with my recommendation that an administrative review cannot be undertaken by a party to the original decision.
7. The Ministry will now accept as valid, written notices of appeal even though they may not be on the Ministry's official appeal form.
8. The Ministry agreed to consider as eligible for S.A.F.E.R. benefits individuals who are entitled to receive an old age pension, regardless of whether or not they are actually receiving benefits.
9. The Ministry agreed to clarify for its line staff the time involved in resolving employment disputes via the Labour Relations Board, so that clients who apply for income assistance pending an L.R.B. decision are dealt with appropriately.

MINISTRY OF LABOUR

1. The Ministry's standard letter to an employer advising that a certificate has been issued against the employer with respect to wages owed to an employee now contains a statement advising the employer that he or she may request a breakdown of those wages, should there be uncertainty as to what wages, vacation pay, general holiday pay, etc., the wage claim actually refers to.
2. The authority's standard letter to an employer advising of a confirmed wage certificate against the employer now makes clear what that confirmation entails. Previously, the reference to the filing of a certificate in court caused some employers to believe the matter would be heard in a court, when, in fact, the notice advised of a final judgment against the employer which was about to be enforced.

MINISTRY OF LANDS, PARKS AND HOUSING

1. The Ministry agreed to provide proper notification and an opportunity for consultation with a lessee of Crown land where the leased land could be affected by an application under consideration by the Ministry. The Ministry took my recommendation further by extending the notification requirement to the owner of any privately-owned property which could be affected by the issuance of a letter of consent.
2. The Ministry agreed that objections raised by area residents and other interested members of the public to B.C. Hydro's exploratory work in the Stikine would be accepted and taken into account by the Ministry personnel who would make the final decision on B.C. Hydro's applications, subsequent to a public meeting in which B.C. Hydro's land use requirements and plans would be made known to interested parties.

MINISTRY OF PROVINCIAL SECRETARY AND GOVERNMENT SERVICES

1. The Ministry agreed to pay employees of its Elections Branch the same salaries as it pays to public servants in equivalent positions. In the past, Elections Branch staff were paid less than other public servants. (CS 82-143)
2. The Registrar of Voters agreed to discontinue the use of voter registration forms which required applicants to state both their social insurance number and date of birth. The form now in use asks for one or the other and points out that both are voluntary information. (CS 82-142)

MINISTRY OF TRANSPORTATION AND HIGHWAYS

1. The Motor Vehicle Department agreed to revise its procedures for determining whether an individual with a physical disability was medically fit to hold a driver's licence. (CS 82-153)
2. The Motor Vehicle Department agreed to amend its procedures to ensure that drivers whose licences were suspended because of offences committed outside Canada are notified of the suspension by double-registered mail. (CS 82-154)

B.C. HYDRO & POWER AUTHORITY

B.C. Hydro notified its credit and collections staff that its policy of advising the Rentalsman in advance of any disconnection that may affect the tenants of multi-unit residences should also be applied to rooming houses and houses with self-contained suites where the landlord is responsible for providing Hydro services. (CS 82-183)

INSURANCE CORPORATION OF B.C.

1. To ensure that all evidence is considered before adjusting claims, the Insurance Corporation of British Columbia issued a bulletin reminding all adjusters to take statements from witnesses who were also passengers in vehicles involved in collisions. The Corporation also addressed the issue of procedures for taking such statements in its training material. (CS 82-191)
2. I.C.B.C. agreed to have its *Insurance (Motor Vehicle) Act* Committee develop guidelines for the payment of accident benefits. The 1983 Regulations were amended to incorporate these guidelines.
3. I.C.B.C. amended its Regulation respecting the eligibility criteria for a handicapped driver discount, so that anyone eligible for a tax rebate under the *Gasoline Tax Act* is also eligible for a handicapped driver discount. CS 82-192)
4. Where I.C.B.C. denies a claim, it has agreed to send a letter to the claimant within 60 days of the claim being made, explaining the reason for the rejection. In addition, I.C.B.C. will notify claimants whose claims are under investigation of this fact within 30 days of I.C.B.C.'s receipt of the claim. If a decision cannot be made about the claim within 60 days, I.C.B.C. will write to the claimant and explain the reason for the delay. (CS 82-187)
5. I.C.B.C. has agreed to supply information to claimants concerning no-fault benefits.
6. I.C.B.C. has agreed to inform claimants who are receiving accident benefits, at least 7 days before their benefits are terminated, of the impending cutoff and the reason for the cutoff. In addition, a pamphlet describing appeal procedures will be enclosed with the decision letter.
7. I.C.B.C. has agreed to allow claimants to consider a settlement offer for at least 10 days in all cases. (CS 82-188)
8. I.C.B.C. has instructed its adjusters to note both in their file and on the salvage disposal form, the fact that authorization to dispose of an individual's car has been obtained over the telephone. (CS 82-190)
9. I.C.B.C. agreed to pay to senior citizens who are the owners and principal operators of motorcycles, the Senior Citizen Grant to which senior car-drivers are entitled. (CS 82-193)
10. I.C.B.C. has agreed that, whenever it is necessary to interview a minor, the interview should be conducted with the consent and in the presence of the minor's parent or guardian. As well, minors will not be asked to sign documents without first having had the opportunity to confer with a parent or guardian. (CS 82-194)
11. I.C.B.C. and the Workers' Compensation Board have agreed to establish procedures to prevent a situation in which a claimant is denied benefits by both agencies due to a dispute between the agencies over whether or not the person was at work at the time of the accident. (CS 82-199)
12. I.C.B.C. agreed to improve its agency appointment procedure based on a number of criticisms which I made of the procedure used in a particular case.

WORKERS' COMPENSATION BOARD

1. The Commissioners of the Workers' Compensation Board agreed to publish the Assessment Department's policies as well as the policies of the Industrial Health and Safety Department.
2. The Commissioners agreed to publish the factors which are routinely relied on in making assessment decisions with specific guidelines for their application in the Assessment Department Procedure Manual.
3. The Commissioners agreed to a change in the Regulations to reduce the percentage used in calculating penalty assessments from 10 percent to 5 percent of the previous year's assessment.
4. The Commissioners agreed to amend the procedure concerning Assessment Department appeals to give employers access to the Assessment Department's submission to the Commissioners. Employers will be notified automatically of the right to obtain this access. (CS 82-241)
5. The Workers' Compensation Board agreed to prepare and distribute an information sheet which will advise widows of the factors that lead to a restructuring of the widow's pension. In addition, the Board will send out a letter one year in advance of each dependent's 18th birthday alerting a widow to changes in her pension.
6. The Boards of Review agreed to prepare a pamphlet containing information on disclosure, procedures at hearings, and information about further appeals to be sent out upon receipt of an appeal.

PART V

TALK BACK: CORRESPONDENCE FROM COMPLAINANTS AND OTHERS

"Thank you for your letter of October 18, 1982 and for your useful evaluation and opinion with respect to my complaint against the Ministry of Health.

I am perfectly willing to accept the position taken by the Ministry of Health since you advise that this is also your position.

I wish to compliment the Ombudsman's office on the service which it provides."

Vancouver
October 23, 1982

"Here's wishing you Dr. Friedmann and your staff a very merry Christmas, and a happy and prosperous New Year. May God richly bless you all. Give 'em hell . . ."

O.K. Falls
December 15, 1982

"Thank you very much for the recent assistance that you gave me with the Workers Compensation Board. Merry Christmas."

Germanson Landing
December 13, 1982

"I am writing to your office to thank you for helping me resolve my problem of getting an Employment Bridging Assistance project approved on this Island. For 2 months I could not find out why the project had not been approved; yet when the most efficient and courteous Mrs. Hughes interceded, the project was shortly thereafter approved. Thank you again, and the best in the new year."

Cortes Island
December 20, 1982

"Thank you sincerely for your tremendous help in my long suffering. Your office has been very supportive, and still encourages one to be honest. It is most gratifying to know that an office like yours, and your staff, are available to help people. I will never forget you people. Thank you."

Fort St. John
July 7, 1982

"I would like to express my deep gratitude to you for the effort you made in solving the dispute between myself and the Land Management office, regarding my leased lot at Stave Lake. I would also like to extend a special thanks to Ms. Pam Lewis for the evenhanded and sensible way she approached the problem by trying not to create a confrontation, but find a solution to the problem. This is the way I preferred it and I am pleased it produced a result that all the participants can hopefully live with. Sir, it is because of this, and because of efforts by you and your office, that the ordinary people still have a

chance of getting justice done in this everyday increasingly regulated world of ours. For that I am grateful to you."

Pitt Meadows
October 25, 1982

"Please accept my sincere thanks for your advice in regard to my problem concerning Farm Classification for my land. I followed your instructions and by using the Acts correctly and presenting my case to the appeal board, within the bounds stated, I was successful in re-classification.

Sooke
November 1, 1982

"I am dismayed and angered knowing that my tax dollar is spent on you, and you in turn support morally corrupted people and crooks. Your filthy cover up is depicting your character. Sincerely I hope you will rot in hell.

Vancouver
April 6, 1982

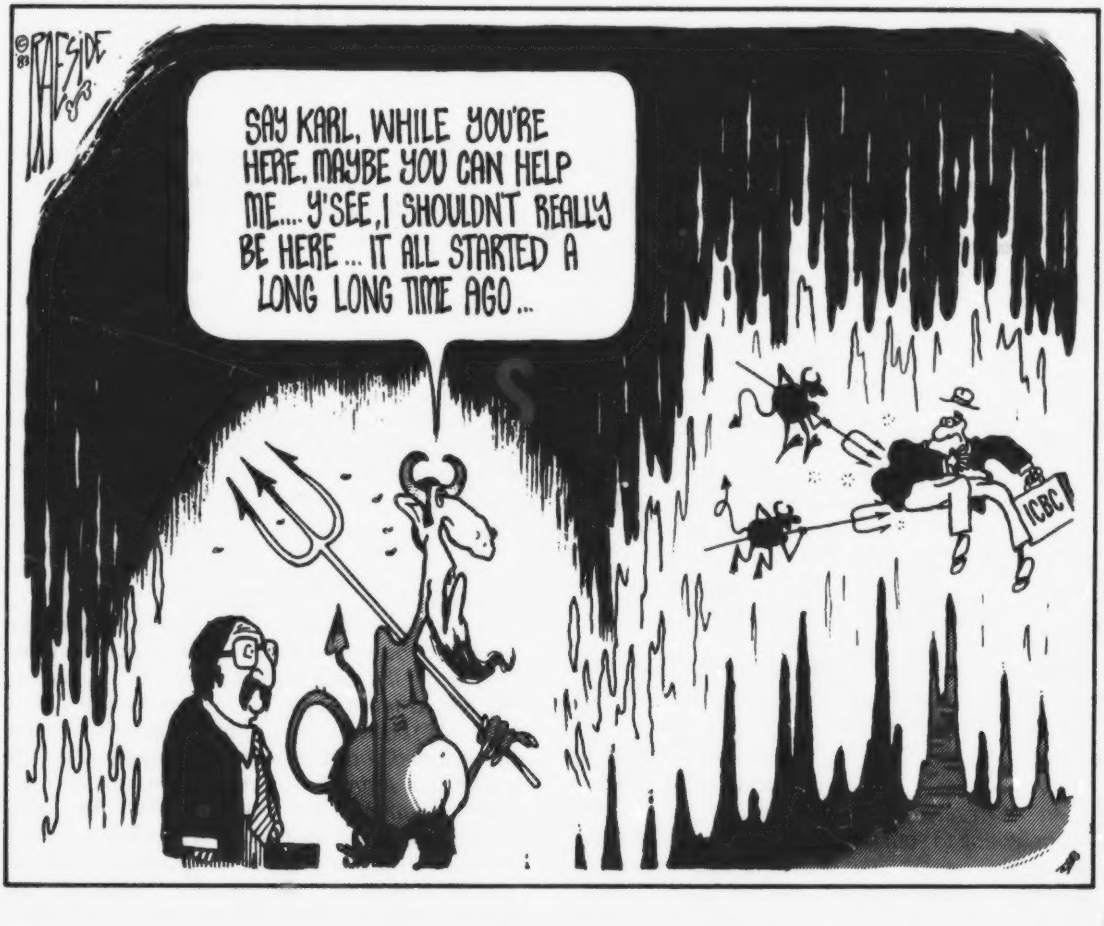
"I would like to thank you and Helen Hughes for the work done by your office towards the getting of bus transportation for the workers at Cominco."

Trail
November 1, 1982

"At a time when my efforts for the last eight years appeared to have been in vain it was most encouraging to know that the services of your Office were there to provide help. As it happened all turned out for the best, yet I do not think I would have had the courage to weather the storm and to succeed without the haven you presented. Now that my school has resumed its function, perhaps more securely and certainly better funded, I feel it is timely to express my relief and my true feelings of gratitude for your help and a specific thank you to Mr. Bill Trott."

South Slocan
September 12, 1982

"Thank you for your letter of September 8th. We want to thank you and the people that worked on our problem within your office. It is refreshing to


©'83 RAESIDE
SAY KARL, WHILE YOU'RE HERE, MAYBE YOU CAN HELP ME.... Y'SEE, I SHOULDN'T REALLY BE HERE ... IT ALL STARTED A LONG LONG TIME AGO...
ICBC

deal with people who are prepared to consider the spirit of the law and apply common good sense to a situation. Too many government people are prepared to quote written regulations, chapter and verse, without exercising judgement."

Kelowna
September 15, 1982

"I thank you for your letter of the 25th of August and your successful intervention in connection with the Real Property Taxation Branch in Victoria. Finally, I have received my tax bill here in Comox and paid it without a fine for delinquency delay. I want to express my gratitude to you all for your prompt attention to my various problems and the expert handling and trouble-shooting which has proved successful indeed."

Lazo
September 1, 1982

"I wish to express my heartfelt thanks to you and your staff for your assistance in having my name removed from the Central Registry of Child Abuse Claims. While I continue to think about the allegation many times each day, at least I have the consolation of knowing my name is no longer on their records. It is also a comfort to know that through your efforts there now exists a fair procedure of dealing with unfounded complaints. Again, I thank you for the support you provided at a time when it was most needed."

Coquitlam
August 7, 1982

"I am writing in response to your letter dated July 21, 1982. Yes, the problem that I had with the Ministry of Human Resources has been resolved. I must admit that I was utterly amazed at how quickly and forcefully the matter was resolved. It is most gratifying to think that an office with the strength this one has is available to the "little people" in this province."

Montrose
August 1, 1982

"This is a thank-you note for resolving our tangled problem regarding our overpayment of taxes on our land. Saanich has reimbursed us, and I am sure that this would never, never have happened without your good offices. Thanks again."

Victoria
July 24, 1982

"We have sent the enclosed letter to the Minister of Human Resources. I have attached a copy of it for your information. I would like to take the opportunity on behalf of myself, and the other people listed on the MHR telex, to thank you and Suzanne Veit for the prompt attention you have given this matter, for the thoroughness of your investigation, and for the thought and concern which went into the recommendations included in the report. As you will note in our letter to the Minister, we are not satisfied with the explanations forthcoming from the Ministry of Human Resources, nor with the Minister's "apology". It is unlikely that we will ever receive satisfactory responses in this regard. However, were it not for your report it is likely that the actions of the Ministry, and the larger implications which they subsume, would not have been given the attention they deserve."

Burnaby
March 12, 1982

"I have you to thank as I am sure I would never have received my cheque without your intervention. I am most grateful and it seems a shame that you are not allowed to receive any expression of gratitude. There must be someway to get around it."

Vancouver
September 12, 1982

"I am grateful for your help as these people needed shaking up. This was a nice quiet place but it is now ruined in my view. Thank you again."

Nelson
June 2, 1982

"We just felt we had to tell you that we appreciate you helping us to get out. We are in the city of Saskatoon, working from morning till night. We thank God that he has freed us from the welfare system of all provinces."

Saskatoon, Sask.
April 28, 1982

"With your help everything has been resolved to my satisfaction and I am happy to inform you that I am settling into camp routine and have been taking active part in the program afforded me here in an Alcohol Awareness program. It is most certainly just what I needed because I have had a drinking problem in the past. I will always feel that you people have contributed to helping me transfer out here."

Maple Ridge
March 17, 1982

"Many thanks for the prompt attention to my problem concerning a copy of my driving record. My apologies for the request, as I was at fault for using my old suite number. However, I find it incredible that our postal service does not check their delivery schedules when the address remains the same, only the suite number has changed."

Langley
January 5, 1982

"Thank you for your letter of October 21, 1982. Your persistence and thorough exploration of all avenues are very much appreciated. You will be pleased to hear that upon presentation of your information, the Summerland Tax Collector reconsidered and M.B. has now received the Schedule 2 Grant for the past tax year. Your service has proven invaluable."

Penticton
October 27, 1982

"Thanks for giving us back our dignity."

Lone Butte
October, 1982

"I came away from the W.C.B. building thinking that there has been a great change for "the better", thanks to your un-tiring efforts, for which I highly commend you."

Nanaimo
October 6, 1982

"I have now received the decision of the case I had placed before the Ombudsman's office and in it, it stated if I had any further need of assistance to contact you. It will come as no surprise to you I am sure that the decision is not at all fair to me."

Rossland
September 24, 1982

"Thank you for your part in persuading the Public Trustee to provide Mrs. . . . and me with information about her assets and income which we had been requesting since February 1982. Mrs. Hughes in your Victoria office, was most understanding and helpful in summarizing my problems for presentation to your Vancouver investigator. I thank all those who have assisted me in helping Mrs. . . ."

Victoria
January 21, 1983

"Everything has been taken care of. Thank you for your concern!" (from an inmate who had complained about delay in his transfer to another institution).

Prince George
August 28, 1982

"Just a note to wish the very best of the holiday season; and also to thank you most sincerely for all the help from you and your staff in my efforts with Labour Standards and the Ministry of Labour. Again, many thanks for your help, without it I would not have been able to get a settlement on this matter."

Langley
December 21, 1982

"It is with sincere thanks and appreciation for your work on our behalf that we write this letter. We believe you were directly instrumental in securing permission for us to build a church to the glory of God on our property in Central Saanich. A special thanks to the good work of your investigator on our behalf."

Saanich
September 1982

"We are in receipt of your letter dated July 9, 1982 and would like to thank you for a most thorough investigation. We are aware, and I'm sure you've discovered, that in most cases dealing with the Ministry of Human Resources, feelings tend to run very high, and dealing with so many different people creates frustration. They most certainly are in a "damned if they do, and damned if they don't" situation. One which we can appreciate. Again our thanks for not only a thorough, but thoughtful investigation on our behalf."

Surrey
July 13, 1982

"I just wanted to write and tell you how much I appreciated your many efforts on behalf of my son's claim against I.C.B.C. re theft of his tape. To be truthful, I never thought he stood a chance (and he didn't without your help), so was pleasantly surprised when he phoned me saying that I.C.B.C. had been in touch with him and would pay for a new tape deck. He has bought one and is most happy."

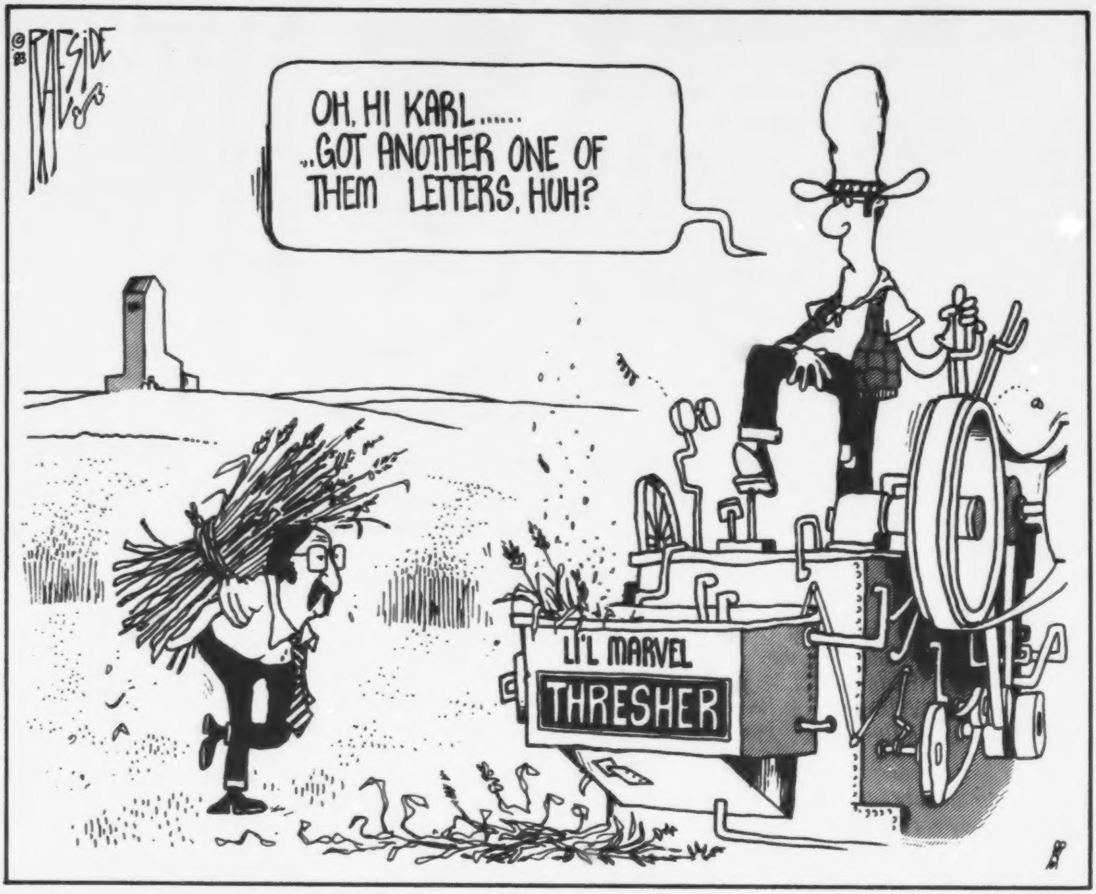
Salmon Arm
December 8, 1982

"I just wish to inform you that I have previously made contact with the Law Society of B.C., in fact it was them I contacted first, but I am still awaiting their answer. I appreciate your suggestion, however, and I thank you for your concern even though you are unable to assist me.

Also thank you for the brochure on your position, it provided some valuable information to me."

Chilliwack
January 6, 1983

"The case now is 110 times worse than it was when I first came to you. You know, of course, that having checked with two members of the Legislature over the Christmas holidays, your job and office is going to be reviewed by the Legislature with possible dissolution—hopefully so. I think that the main reason you have delayed my case is that you have known that any public servant will never admit that they are at fault. Public servants have always covered up complaints. You and your office continue to do the same without just cause. I must again stress that if you cannot see fit to allow a face-to-face confrontation, it is best that you not handle the case. I could go on and on complaining, but what's the use? Hopefully, with the return of the legislature,


© 83 RAESIDE
OH, HI KARL...... ..GOT ANOTHER ONE OF THEM LETTERS, HUH?
LI'L MARVEL
THRESHER

surely they will see fit to remove you from office and send you back to Alberta to thrash the wheat as you cannot cut the mustard here in B.C."

Vancouver
December 28, 1981

"How joyful you made us this X-mas with your success that by God's grace you were allowed to accomplish. For the largest time we have given up all hope, but now we know that indeed you are graciously given the power to pursue many grave injustices by our governments and work for the poor and powerless. Powerless we are, for how could we accomplish to convince W.C.B. that they really owed us the $107.90, which we thankfully received, but don't you think that they also owe us the interest since June 23rd, 1980? We know now that you will also collect our interest and are therefore very thankful to God for having given us a worthy Ombudsman."

Duncan
January 25, 1983

"Sir I would like to say thank-you for your inquiry on the matter and very informative letter, also for pointing me to the direction and supplying me the proper address to further my complaint.

Your help is very much appreciated, and do keep up the good work!"

Agassiz
November 18, 1982

"Thank you for your letter of 11th. To answer first your final sentence, I am indeed satisfied with the attention of your office. It is most refreshing to find a Government office that follows through on a matter and keeps at it without having to be constantly goaded into activity. This might be noted at the present time, when the union is evidently afraid that civil servants might be required to be "productive". Your example might be emulated."

Vancouver
August 16, 1982

Letter to Nicole Parton's FEEDBACK in the Vancouver Sun, October 26, 1982:

"Dear Nicole: On April 16 this year, I wrote a letter (file number 825752) to the Ombudsman complaining about a decision that was made by the

Rentalsman. June 17, I received a phone call from the Ombudsman asking for more information, which I supplied that day.

Aug. 2, I reminded the Ombudsman's office that this matter had not had their attention yet; on Sept. 4, I wrote them a double-registered letter. After six months' wait, I have still not had an acknowledgement from the Ombudsman. Where do I go from here?

Heike Zimmermann
New Westminster"

Ombudsman's letter to Ms. Zimmermann, October 27, 1982:

"Dear Ms. Zimmermann:

I have written today to Nicole Parton of the Vancouver Sun concerning the letter from you which she published on October 26 and I enclose a copy of my response for your information.

I have now taken the time to review your file and what my office did, or rather failed to do, on your complaint and I must agree with you that there is no justification for the delay and for the time we have taken. (My investigator), I believe, has already explained to you the failure of his procedures and I understand he will meet you on November lst to discuss all outstanding issues with you.

I would like to state again to you personally that your complaint about my office's failure to respond appropriately is completely justified. When (my investigator) could not reach you by telephone our office procedures require that he contact you by letter and our office procedures further state that when a complaint cannot be resolved within one month the investigator must contact the complainant to inform him or her about the status of our investigation.

I have now instituted additional procedures to ensure that a failure of this type will not recur. Please accept my sincere apologies for the inconvenience this has caused you.

Best regards.

Yours sincerely,

Karl A. Friedmann
Ombudsman"

Ombudsman's letter to Mrs. Parton, October 27, 1982:

"Dear Mrs. Parton:

On October 26 you published a letter from Ms. H. Zimmermann to you complaining about the Ombudsman's failure to respond promptly to her complaint about a Rentalsman issue.

I must confirm that Ms. Zimmermann was quite correct and fully justified in complaining about my office. I have now taken corrective measures to ensure that this breakdown in communication does not occur again and I will be sending a letter with my apologies to Ms. Zimmermann.

Yours sincerely,

Karl A. Friedmann
Ombudsman"

Mrs. Parton's response in the Vancouver Sun, November 9, 1982.

"If I ever printed my Most Admired Persons list, you'd be right on top, Mr. F. You do a superb job. Small wonder your officers are busy.

Nicole Parton"

Some "official" TALK BACK:

I am pleased to inform you that the application has been approved for payment and the cheque in the amount $5,566.71 has been issued in payment for the full pension retroactively to July 1980. Thank you for bringing this matter to my attention.

Monique Begin
Ottawa
September 29, 1982
Minister of National
Health & Welfare"

I wanted to thank you for your office's procedure of distributing, to Ministry of Human Resources' District Supervisors, a copy of your Annual Report.

It is a pleasurable experience for I and my staff to increase our understanding of your Office's duties outside of the learning obtained when working on a Ministry of Human Resources related investigation.

The style and format of the report is great. My congratulations to whoever was responsible for their continued success in being able to actually make useful and enjoyable a dreaded "Annual Report".

Ministry of Human Resources
District Supervisor
May 28, 1982

How Others See Us

Excerpts from an address to the Langley Rotary Club by Graham Reid, Corporate Secretary and General Counsel for the Insurance Company of British Columbia:

The Ombudsman has been called the "court of last resort" when you are fighting government or crown corporations.

Since I.C.B.C. was the Ombudsman's single biggest customer in 1982, a review of our relationship is essential not only to us, but to the general public which views I.C.B.C.'s performance with mixed feelings.

I should say that I personally believe in the underlying purpose of the office of the Ombudsman. He has a role to play in assisting government and its agencies, to look at their own processes and to judge the effect on the public they deem to serve.

Where I personally get upset, is when there is evidence of cases that our procedures and policies have not been adhered to, or have not been adequately explained. No doubt about it, there are cases where we have just plain "goofed" . . .

But since communication is a two-way process, I can also tell you that there are instances where the Ombudsman's office has to agree with us that justice has been served in spite of the claims of the client . . .

Typically, we encounter the gamut of dissensions that range from honest misunderstandings of law or policy or procedure, to outright attempts at fraud.

The reason the number of Ombudsman-involved cases is on the increase can only be guessed at. But I would speculate that it is for the same reason that people are questioning their bank statements or utility bills—money is tight and we all want to account for every cent . . .

The relationship of the Ombudsman versus I.C.B.C. used to be on an almost adversarial basis. This is no longer the case.

With few exceptions, I.C.B.C. does a top calibre job of fulfilling its mandate, and where we show neglect, there are Karl Friedmann's people to ask us for a second look.

After all, it was their suggestion that led to our production of the six explanatory claims brochures that you see before you today. For that, the Ombudsman's office deserves praise because the brochures have enjoyed extensive distribution and use in recent months.

The new brochures anticipate the common questions that you may ask of us, and form the core of inquiries we see at our claim centres every day.

Let me assure you that we feel an intrinsic part of our mandate is to answer questions and to explain. We have nothing to hide . . . we welcome inquiry and ask that people come to us first, rather than seek the potentially erroneous advice of non-professionals.

I believe that I.C.B.C. and the office of the Ombudsman, together create an environment of honest examination of the issues that benefits us all, whether as policyholders of I.C.B.C., or just residents of British Columbia . . . That being the case can only mean more satisfied customers for I.C.B.C., and a greater ability for the Ombudsman's office to utilize their staff where they are needed the most, and where they do the most good.

PART VI

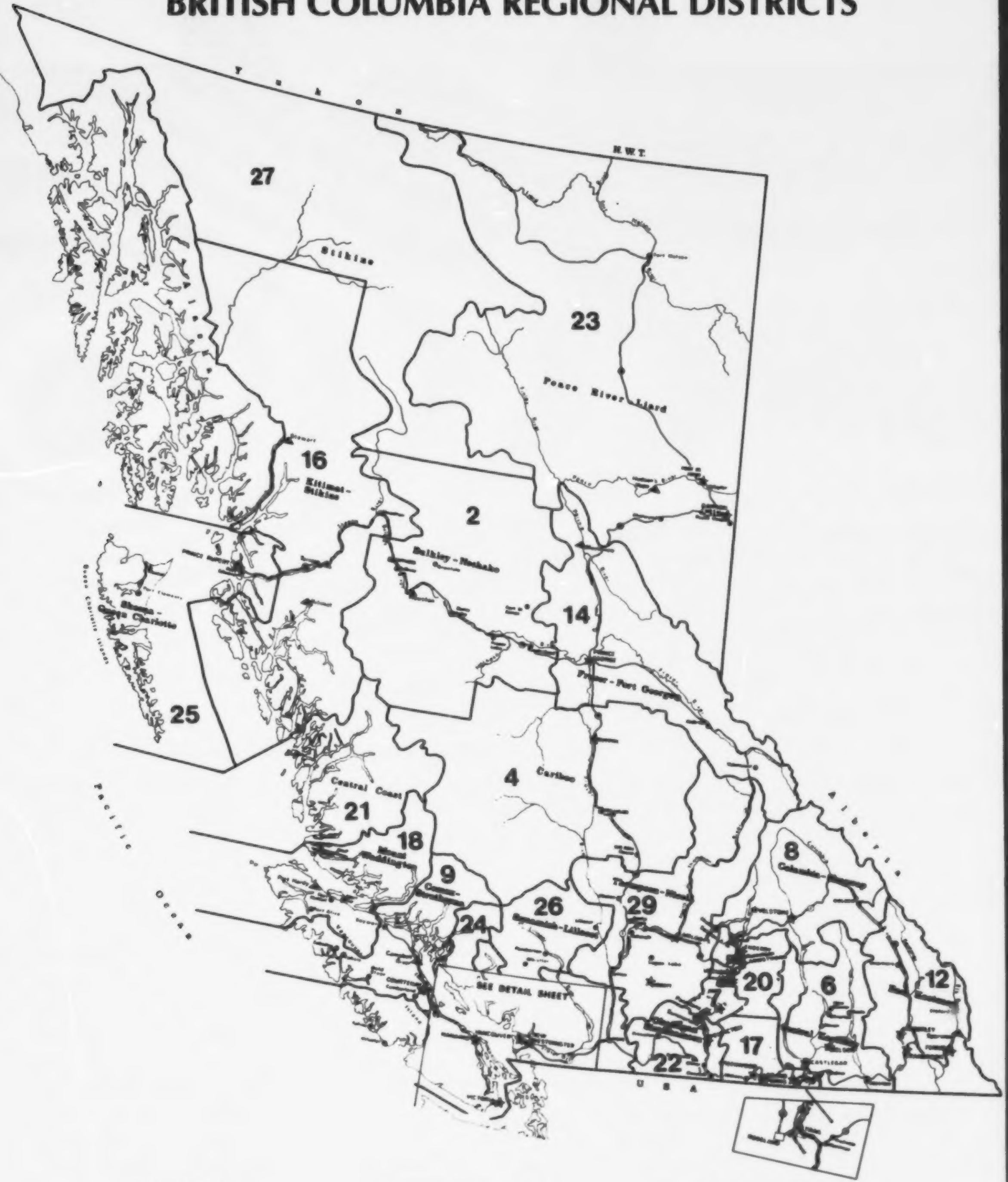
TABLES

TABLE 1

Profile of Complainants, and Complaints Closed Between January 1, 1982 and December 31, 1982

		Number	Percent
COMPLAINANT GROUP	Individual/Family	7,551	94.64
	Business	201	2.52
	Union	14	.18
	Group	135	1.69
	Public Servant	21	.26
	Others	57	.71
COMPLAINT INITIATOR	Aggrieved Party	7,097	88.95
	Relative/Friend	594	7.44
	M.L.A. and M.P.	32	.40
	Professional	128	1.60
	Ombudsman	52	.65
	Public Servant	14	.18
	Others	62	.78
INITIATOR'S GENDER	Male	4,654	58.33
	Female	3,120	39.10
	Family	95	1.19
	Group/Other	110	1.38
FIRST CONTACT	In Person	855	10.72
	Letter	1,042	13.06
	Telephone	6,030	75.57
	Not Applicable	52	.65
COMPLAINT INITIATED AT	Victoria Ombudsman Office	4,766	59.73
	Vancouver Ombudsman Office	2,965	37.16
	Local Visit	248	3.11
	TOTAL	7,979	100.00

BRITISH COLUMBIA REGIONAL DISTRICTS


Yukon
N.W.T.
27
Stikine
23
Peace River-Liard
16
Kitimat-Stikine
2
Bulkley-Nechako
14
Fraser-Fort George
Skeena-Queen Charlotte
25
Alaska
Pacific Ocean
4
Cariboo
Central Coast
21
18
Mount Waddington
9
Comox-Strathcona
26
Squamish-Lillooet
29
Thompson-Nicola
24
8
Columbia-Shuswap
Alberta
20
6
12
7
17
22
SEE DETAIL SHEET
U.S.A.

Regional Districts

1. Alberni-Clayoquot
2. Bulkley-Nechako
3. Capital Region
4. Cariboo
5. Central Fraser Valley
6. Central Kootenay
7. Central Okanagan
8. Columbia-Shuswap
9. Comox-Strathcona
10. Cowichan Valley
11. Dewdney-Alouette
12. East Kootenay
13. Fraser-Cheam
14. Fraser-Fort George
15. Greater Vancouver
16. Kitimat-Stikine
17. Kootenay Boundary
18. Mount Waddington
19. Nanaimo
20. North Okanagan
21. Central Coast
22. Okanagan-Similkameen
23. Peace River-Liard
24. Powell River
25. Skeena-Queen Charlotte
26. Squamish-Lillooet
27. Stikine Region (unincorporated)
28. Sunshine Coast
29. Thompson-Nicola

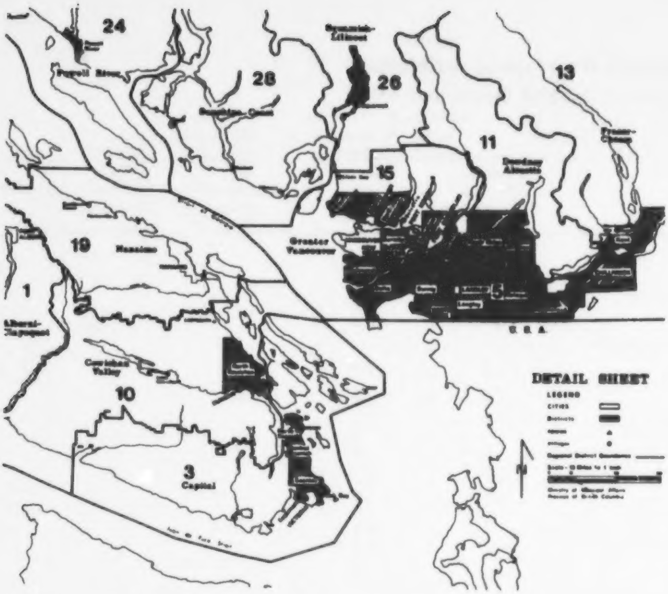

24
Powell River
28
Sunshine Coast
Squamish-Lillooet
26
13
Fraser-Cheam
11
Dewdney-Alouette
15
19
Nanaimo
Greater Vancouver
1
Alberni-Clayoquot
Cowichan Valley
10
3
Capital
U.S.A.
DETAIL SHEET
LEGEND
CITIES

TABLE 2

Percentage of Complaints Closed by Regional District as of December 31, 1982

Regional Districts	Percentage of Total B.C. Population (October 1980)	Percentage of Total Ombudsman Complaints Closed (as of Dec. 31, 1982)
1. Alberni-Clayoquot	1.2	1.5
2. Bulkley-Nechako	1.4	2.0
3. Capital Region	9.2	16.8
4. Cariboo	2.2	2.6
5. Central Fraser Valley	4.1	1.5
6. Central Kootenay	2.0	2.3
7. Central Okanagan	2.9	2.3
8. Columbia-Shuswap	1.4	2.0
9. Comox-Strathcona	2.5	1.9
10. Cowichan Valley	1.9	2.0
11. Dewdney-Alouette	2.2	1.2
12. East Kootenay	2.0	1.9
13. Fraser-Cheam	2.0	1.8
14. Fraser-Fort George	3.3	4.7
15. Greater Vancouver	42.8	32.7
16. Kitimat-Stikine	1.4	2.0
17. Kootenay Boundary	1.2	1.2
18. Mount Waddington	.6	.3
19. Nanaimo	2.7	3.6
20. North Okanagan	1.9	2.5
21. Central Coast	.2	.3
22. Okanagan-Similkameen	2.1	2.0
23. Peace River-Liard	2.1	2.5
24. Powell River	.7	.3
25. Skeena-Queen Charlotte	.9	.8
26. Squamish-Lillooet	.7	.8
27. Stikine Region (Unincorporated)	.1	.0
28. Sunshine Coast	.6	.4
29. Thompson-Nicola	3.7	4.9
Out-of-Province	N/A	1.2
TOTAL	100.0	100.0

TABLE 3

Disposition of Complaints (Proclaimed Authorities) Closed Between January 1982 and December 1982

	Declined Withdrawn Discontinued	Resolved: Corrected during Investigation	Substantiated: Corrected after Recommendation	Substantiated but Not Rectified	Not Substantiated	TOTAL
A. MINISTRIES						
Agriculture and Food	4	1	1	0	4	10
Attorney General	164	130	10	1	114	419
Consumer and Corporate Affairs	239	72	3	0	32	346
Education	14	8	0	1	2	25
Energy, Mines and Petroleum Resources	2	4	1	0	6	13
Environment	22	32	1	0	31	86
Finance	22	27	3	1	25	78
Forests	7	11	5	2	10	35
Health	56	71	3	2	31	163
Human Resources	256	207	8	2	126	599
Industry and Small Business Development	1	2	0	0	2	5
Labour	45	16	1	0	16	78
Lands, Parks and Housing	28	34	6	3	68	139
Municipal Affairs	22	13	2	0	11	48
Premier's Office	1	0	0	0	0	1
Provincial Secretary	7	12	0	1	5	25
Transportation and Highways	83	50	14	2	71	220
SUB-TOTAL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PERCENT	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

TABLE 3 — *Continued*

	Declined Withdrawn Discontinued	Resolved: Corrected during Investigation	Substantiated: Corrected after Recommendation	Substantiated but Not Rectified	Not Substantiated	TOTAL
B. BOARDS, COMMISSIONS, ETC.						
Agricultural Land Commission	8	6	0	0	10	24
Alcohol and Drug Commission	3	1	0	1	2	7
Board of Industrial Relations	0	2	1	0	1	4
B.C. Assessment Authority	21	8	4	0	14	47
B.C. Assessment Appeal Board	4	5	1	0	2	12
B.C. Board of Parole	3	1	0	0	1	5
B.C. Buildings Corporation	1	0	1	0	0	2
B.C. Ferry Corporation	4	5	1	0	1	11
B.C. Housing Management Commission	9	2	0	0	3	14
B.C. Hydro and Power Authority	67	50	1	0	17	135
B.C. Police Commission	1	0	0	0	1	2
B.C. Railway	6	0	0	0	1	7
Compensation Advisory Services	2	1	0	0	0	3
Emergency Health Services Commission	2	1	0	0	3	6
Environmental Appeal Board	0	1	0	0	2	3
Government Employee Relations Bureau	0	1	0	0	4	5
Insurance Corporation of B.C.	333	268	19	2	169	791
Labour Relations Board	16	3	0	0	14	33
Medical Services Commission	5	22	0	0	1	28
Motor Carrier Commission	16	10	1	0	6	33
Ocean Falls Corporation	4	3	0	0	1	8
Public Service Commission	19	8	3	0	6	36
Superannuation Commission	10	8	3	0	26	47
Workers' Compensation Board	312	62	35	0	31	440
WCB Boards of Review	49	3	3	0	3	58
OTHERS	58	8	4	0	7	77
SUBTOTAL	953	479	77	3	326	1,838
PERCENT	51.85	26.06	4.19	.16	17.74	100.0
TOTALS A and B	1,926	1,169	135	18	880	4,128
PERCENT	44.66	28.32	3.27	.43	21.32	100.0

TABLE 4

Extent of Service

Complaints Against Unproclaimed Authorities (Sections 3–11 Schedule of the *Ombudsman Act*) Closed between January 1982 and December 1982

	Extent of Service			
	No assistance necessary or possible	Information provided/ Referral arranged	Inquiries made and resolution facilitated	TOTAL
Municipalities (Section 4)	24	169	19	212
Regional Districts (Section 5)	6	69	7	82
Islands Trust	0	4	0	4
Public Schools (Section 7)	3	34	11	48
Universities (Section 8)	2	4	1	7
Colleges and Provincial Institutes (Section 9)	2	3	2	7
Hospital Boards (Section 10)	4	8	6	18
Professional and Occupational Associations (Section 11)	2	10	3	15
TOTAL	43	301	49	393
PERCENT	10.94	76.59	12.47	100.0

TABLE 5

Extent of Service

Non-Jurisdictional Complaints Closed between January 1982 and December 1982

	Extent of Service			
	No assistance necessary or possible	Information provided/ Referral arranged	Inquiries made and resolution facilitated	TOTAL
Federal, other provincial, territorial and foreign governments	55	518	119	692
Marketplace matters — requests for personal assistance	116	1,649	273	2,038
Professionals' actions	17	189	30	236
Legal and Court matters	34	194	35	263
Police matters	9	60	21	90
Miscellaneous	13	92	34	139
TOTAL	244	2,702	512	3,458
PERCENT	7.06	78.14	14.80	100.0

TABLE 6

Reasons for Discontinuing Investigations
All Jurisdictional Closed Complaints

Reasons		Number	Percent
1. No Jurisdiction		104	5.40
2. Abandoned by Complainant		397	20.61
3. Withdrawn by Complainant		367	19.06
4. Statutory Appeal (Section 11 (1) (a))		327	16.98
5. Solicitor (Section 11 (1) (b))		2	.10
6. Discontinued by Ombudsman (Discretionary)		729	37.85
(a) Over 1 year old	4		
(b) Insufficient personal interest	7		
(c) Other available remedy	489		
(d) Frivolous	1		
(e) Investigation unnecessary	112		
(f) Investigation not beneficial to complainant	116		
TOTAL		1,926	100.0

TABLE 7

Level of Impact

Resolved and Rectified (Jurisdictional) Complaints
Closed between January and December 1982

	Level of Impact					
	Individual Only	Practice	Procedure	Regulation	Statute	TOTAL
Resolved Complaints	998	122	47	1	1	1,169
Rectified Complaints	62	14	48	5	6	135
TOTAL	1,060	136	95	6	7	1,304

TABLE 8

Budget and Expenditure Information

	Budget Estimates				Actual Expenditures		
	1979/80	1980/81	1981/82	1982/83	1979/80	1980/81	1981/82
Salaries	—	631,203	955,405	1,251,497	47,591	709,166	970,199
Operating Expenses	300,000	387,000	504,720	508,843	213,495	430,826	482,406
TOTAL	300,000	1,018,203	1,460,125	1,760,350	261,086	1,139,992	1,452,605

Salaries paid from Contingency Vote	244,074	109,004	100,229
Cash benefits	—	41,214	35,466
Summer Student Program (paid by Ministry of Labour)	—	26,903	—
TOTAL	505,160	1,317,113	1,588,300

POOR

QUALITY

ORIGINAL